

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - 10 March 2021

(Author: David Gedney - Senior Planning Officer)

Purpose: To consider Planning Application H05-1156-20

Application Number: H05-1156-20

Date Received: 17 December 2020

Application Type: SEC 73 MODIFICATION

Description: Demolition of storage building and erection of new agricultural packhouse - approved under H05-0396-17. Modification of Condition 5 relating to operating hours.

Location: You Garden Packhouse Long Lane Gedney Hill

Applicant: You Garden Ltd.

Agent: Matrix Planning Ltd.

Ward: Fleet

Ward Councillors: Cllr P E Coupland

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

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H05-1156-20>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 The application raises issues that warrant consideration by Planning Committee.

2.0 PROPOSAL

2.1 Full planning permission was granted in June 2017 to replace an agricultural storage building (360sqm) with an agricultural packhouse (approximately 2,760 sqm) on an existing nursery (ref. H05-0396-17). It has a length ranging between 66 and 78 metres, width of 40 metres (2 bays), ridge height of some 7.7 metres and is constructed in Olive Green box profiled metal cladding with a natural fibre cement roof.

2.2 Condition 5 of the permission stipulates the following:
No packing operations shall be carried out and no deliveries shall be taken at or dispatched from the site outside the following hours:
- 07:00 and 20:00 hours on Mondays to Fridays inclusive between the period 15 March and 15 June;
- 07:00 and 18:00 hours at all other times including Saturdays, Sundays and Bank or Public Holidays.

2.3 This application is to modify the working hours to the following:
- 06:00 and 22:00 hours on Mondays to Fridays inclusive between the period 01 March and 30 June;
- 07:00 and 20:00 hours on Saturdays and Sundays between the period of 01 March and 30 June;
- 07:00 and 20:00 hours on Mondays to Fridays inclusive outside the period of 01 March and 30 June;
- 07:00 and 18:00 hours at all other times including Saturdays, Sundays and Bank or Public Holidays.

- 2.4 The economic reasons for extending the working hours are outlined later in the report (see Information from Applicant).

3.0 SITE DESCRIPTION

- 3.1 The packhouse is part of an existing nursery (some 4.53ha) on the eastern side of Long Lane, approximately 1.2km to the north-west of the Gedney Hill village centre. Vehicular access is off Long Lane.
- 3.2 Residential properties are situated immediately to the north-west, south-west and west fronting Long Lane. Dwellings are also situated to the rear of the premises off Langary Gate.

4.0 RELEVANT PLANNING POLICIES

4.1 The Development Plan

South East Lincolnshire Local Plan, March 2019

- 1 Spatial Strategy
- 2 Development Management
- 3 Design of New Development
- 4 Approach to Flood Risk
- 5 Improving S E Lincolnshire's Employment Land Portfolio
- 6 Pollution
- 7 Community, Health and Well-being
- 8 Vehicle and Cycle Parking
- 9 Appendix 6 Parking Standards

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.

National Guidance

National Planning Policy Framework (NPPF), 2019

Sections 2, 4, 6, 8, 9, 12, 14 and 15.

Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

- 5.1 H05-0396-17 - Full - Demolition of present storage building and erection of new agricultural packhouse, Kingfisher Nurseries, Long Lane, Gedney Hill - Granted 28 June 2017 subject to the following conditions:

Condition 3 - Use restricted to agricultural packhouse;

Condition 4 - Noise emitted from fixed plant and machinery shall not exceed the background noise level by more than 5dB(A) when measured as a 15 minute L(A)eq at any residential boundary not within the applicant's ownership;

Condition 5 - No packing operations shall be carried out and no deliveries shall be taken at or dispatched from the site outside the following hours:

07:00 and 20:00 hours on Mondays to Fridays inclusive between the period 15 March and 15 June;

07:00 and 18:00 hours at all other times including Saturdays, Sundays and Bank or Public Holidays;

Condition 6 - There shall be no HGV access to the site outside the hours referred to within condition 5 and no overnight operation of internal combustion engine operated vehicle refrigeration motors.

H05-0149-18 - C/C - Details to show retention and enhancement of existing boundaries, foul water disposal and external lighting (Conditions 7, 10 and 11 of H05-0396-17) - Approved 4 April 2018.

H05-1016-18 - Full - Erection of glasshouse, Long Lane, Gedney Hill - Granted 4 January 2019.

6.0 REPRESENTATIONS

6.1 Fleet Parish Council

Having already received complaints from residents regarding noise and HGV's parking on residential roads we feel written assurances should be forthcoming from the applicant that there will be no obstruction to public highways, property access by either their own vehicles or that caused by their staff or suppliers. Then a similar written assurance as regards noise. If approved, the application should be subject to compliance with adherence to noise and vehicle parking controls being implemented.

6.2 LCC Highways

Does not wish to restrict the grant of permission.

6.3 SHDC Economic Development

Supported. This business has grown and continues to grow, creating new jobs, supporting local suppliers, and providing a much needed service during the pandemic. The temporary extension of working hours will enable the company to trade effectively during their peak period.

6.4 SHDC Environmental Protection (Noise)

Recommend a temporary permission of 12 months initially.

6.5 Public

Objections have been received from local residents on the following grounds (summarised): Noise and disturbance during early mornings and late evenings from vehicles, fork lifts, engines revving, music blaring out, staff conversations and lorries; Distribution centre and not a nursery; Adverse effect upon health; Frequency and noise of Yodel lorries; Extra traffic (HGVs) that already queue on the road whilst waiting to enter the site; Roads already in unsuitable and in poor condition, including entrance; Intimidating to walk along pavement because lorries exceed speed limit and come close to pedestrians - detrimental to highway safety; Management break promises made at resident meetings; Lorries shake/vibrate properties; Pollution; Needs to be a limit on the number of vehicles; Excessive with no concern for community; Should be on an industrial estate and not in a country village; Employees do not live locally; Rubbish at entrance has increased; Anti-social behaviour; Lights from greenhouse; Large lorries will interfere with local wildlife, bats and Barn Owl flight paths; Must consider drop and go trailers to allow the site to work to logistical staff hours required but limit lorry hours; Other businesses referred to not go through villages.

6.6 Information from Applicant

You Garden are nursery growers and suppliers, with plant growing and distribution direct to the customer. They have recently increased their nursery growing capacity with a larger packhouse to process these plants (completed in late 2017, aided by the Leader grant programme). The company have expanded in line with early projections.

However, changed working practices are required only for the peak period March to June of trading given (a) the influence of the pandemic and (b) increased demand. This requires, during that period only, extending the current permitted working hours by a fifth.

Pandemic Related Changes - Changed working arrangements arise from the need to spread shift patterns to aid employee separation. Work can continue as before the pandemic but must now be spread over a longer working day, thus at any one-time reducing employee density.

Trade Related Changes and Growing Employment - Increased demand has also resulted from the popularity of home ordering. This has forced a change in operating practices and a need to extend working hours in the peak period.

Permission is required to enable forward planning, protect business continuity, and to assist management of this company's growth as it enters its peak period in 2021.

You Garden now currently employ 85 full time permanent staff and seasonally add between 90 - 150 agency staff (March to June). Many of these staff (both permanent and agency) live locally. Current staffing reviews are likely to lead to 20-30 additional permanent staff later in 2021. This is subject to an assessment of Post -Pandemic market conditions.

The early starts are a necessary part of operations given a need to supply some customers promptly. It supports an extended working day reducing the chance of work peaking. Collections are then efficiently spread throughout the day, rather than drivers crowding to meet the present narrower range of permitted hours.

A very brief review of other distribution companies locally has been undertaken. This has included in Spalding - Bakkavor, Flamingo, or Butters; and in a village context - K Martin & Sons at Moulton Chapel. This shows that their operations are not constrained by hours restrictions.

7.0 CONSIDERATIONS

7.1 Planning Considerations

7.2 The principle of the development has already been established by virtue of planning permission ref. H05-0396-17. This application is solely to modify condition 5 relating to operating hours. The main issue, therefore, is whether an extension of the operating hours is acceptable in terms of its impact upon the amenity of nearby residents, highway safety, etc.

7.3 Amenity

7.4 Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019 indicate that sustainable considerations should be met concerning new development, including in relation to the impact upon neighbouring land uses and residential amenity by reason of noise, odour, disturbance or visual intrusion. Policy 30 states that there should not be any unacceptable impacts upon the amenities of the area, including noise, odour, air quality and light levels.

7.5 The nearest residential properties are situated immediately to the north-west, south and west of the site fronting Long Lane, including properties adjacent the vehicular access to the site. Dwellings are also situated to the rear of the premises off Langary Gate.

7.6 The reasons for the proposed extension of operating hours are outlined earlier within the report (see information from applicant). Changed working practices are required for the peak period March to June of trading given (a) the influence of the pandemic and (b) increased demand. This requires, during that period only, extending the current permitted working hours by a fifth.

7.7 Changed working arrangements as a result of the pandemic arise from the need to spread shift patterns to aid employee separation. Work can continue as before the pandemic but must now be spread over a longer working day, thus at any one-time reducing employee density. Increased demand has also resulted from the popularity of home ordering. This has forced a change in operating practices and a need to extend working hours in the peak period.

7.8 Complaints have been received from local residents on grounds of increased noise and disturbance during early mornings and late evenings from HGVs, cars, fork-lifts, engines revving, music blaring out, staff conversations, light pollution, etc. It is accepted that there may well be some additional noise and disturbance as a result of extended operating hours. However, the determining issue is whether this is sufficient to outweigh the clear economic benefits. The National Planning Policy Framework promotes economic growth. Paragraph 83 specifically indicates that planning policies and decisions should support the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing

buildings and well-designed new buildings.

- 7.9 In terms of the degree of harm that the proposal would cause, advice has been sought from Environmental Protection. They accept that the proposal may well have an impact upon local residents; however, they are not in a position to corroborate the objections as they have no independent evidence to support the allegations, having no noise complaints recorded against the premises.
- 7.10 Nevertheless, they recognise that some of the issues raised by the local residents are concerning and the proposed increase in hours may give rise to complaints on issues which the Environmental Protection Team would be obliged to investigate. Whilst the lack of independent evidence makes it difficult for Environmental Protection to object to the application, the concerns raised by local residents have been noted. They therefore recommend that a temporary planning permission be granted for 12 months. This would enable residents to keep a diary record of any noise nuisance, etc if it were to arise and the Authority to review and re-assess the proposal after a period of 12 months.
- 7.11 Issues have been raised in relation to anti-social behaviour, including staff gathering outside the premises, litter, loud conversations, etc. This matter has been taken up with the applicants, who have indicated that they are not aware of such issues arising. Nevertheless, they have stated that they will take the concerns raised at face value and refine management to ensure a higher standard of neighbourly behaviour. If any subsequent problems were to occur they could be investigated under separate legislation and taken into consideration when the application for an extension of hours was reviewed.
- 7.12 The proposal therefore satisfactorily complies with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019, subject to condition 5 of the present planning permission (ref. H05-0396-17) being modified for a temporary period of 12 months.
- 7.13 Highway issues
- 7.14 Local residents have raised concerns on grounds that extended operating hours would increase HGV movements (Yodel lorries) and be detrimental to highway safety.
- 7.15 The above concerns have been taken up with the applicants, who have confirmed that Yodel is the only haulier that the business uses to distribute its products; and this has not changed over the period of the business being on site. Regarding the amount of HGV movements, part of the reason for extending hours is to spread shift patterns to aid employee separation during the pandemic. Nevertheless, as a result of the concerns expressed, the applicants have agreed to accept tighter restrictions on HGV access, stopping any HGV access an hour before the proposed extended closing time during the period 01 March 2021 and 30 June 2021. This can be addressed by means of a modification of condition 6 of the present planning permission (ref. H05-0396-17).
- 7.16 LCC Highways have been consulted as the relevant highway authority and are aware of concerns raised by local residents. However, they are of the opinion that the modification of working hours would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact on the highway network. These are the only reasons the National Planning Policy Framework (NPPF) will permit to be cited for restricting or refusing development on highway grounds.
- 7.17 Other Material Considerations
- 7.18 Use of the premises
- 7.19 Concerns have been raised over whether the use of the packhouse/premises is agricultural. This has been taken up with the applicant, who has responded as follows:
- 7.20 "We can re-confirm that there are no sales to any members of the public from this site. As a business we do trade a number of non-plant items, however we are very aware of our planning

limitations, and therefore the majority of these are sold in what is called a drop ship format; which means that while You Garden sells the product, the fulfilment is completed direct from the supplier, so the product never actually goes through the nursery site. If we were able to transact these items through the site; we would be in a position to offer more local employment to facilitate this trade; however, we currently manage it in this way as a result of our planning authorisation.

- 7.21 The plant products sold by the business have a period of growing on the large area of beds at the nursery; and it is easy to see that any part of the year the large amounts of stock we have growing on the beds on the site. We do obviously, as most growers, source plants in a younger state from various producers that are then grown on further at the nursery. Therefore, the business is still correctly classified as agricultural."
- 7.22 Ecology
- 7.23 Issues have been raised over evening activity and HGV movements directly associated with the site having an adverse effect on wildlife such as Barn Owls and Bats. However, this cannot be substantiated.
- 7.24 Other Matters
- 7.25 Concerning issues such as possible structural damage to property, there is no substantiated evidence to suggest that it is directly caused by vehicles visiting this specific site, as opposed to general traffic. This could be dealt with under separate legislation if proven. Devaluation of property is not a planning consideration. Pollution matters such as burning of waste can be addressed under separate environmental legislation if necessary.
- 7.26 Planning Balance
- 7.27 It is accepted that the proposal may well have some impact upon nearby residents, including increased noise and disturbance, etc. However, economic factors in favour of the proposal carry substantial weight. The National Planning Framework, 2019, promotes sustainable economic growth. Paragraph 83 specifically indicates that planning policies and decisions should support the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings. Taking all factors into consideration and following discussions with the applicant, it is recommended that permission be granted for a temporary period of 12 months to enable the Authority to re-assess the situation after this period.
- 7.28 Conclusion
- 7.29 The planning balance presently lies in favour of the proposal and it is therefore recommended that permission be granted for a temporary period of 12 months.
- 7.30 **Additional Considerations**
- 7.31 Public Sector Equality Duty
- 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.

- 7.32 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.33 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.
- 7.34 It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.
- 7.35 Human Rights
- 7.36 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).
- 7.37 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.

8.0 RECOMMENDATIONS

- 8.1 **That permission be granted for a temporary period of 12 months.**

9.0 CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
Dwg. no. 2 - Block Plan showing shed removed;
Dwg. no. 2 - Block Plan showing new packhouse;
Dwg. no. 3 - Key Visual Features;
Topographical Survey (dwg. no. ALS7788/200/01) dated March 2017 accompanying planning application ref. H05-0396-17;
Dwg. nos. E1255/P1, E1255/P2 and E1255/P3 dated 22 March 2017 accompanying planning application ref. H05-0396-17;
Flood Risk Assessment by S M Hemmings dated 10 April 2017 accompanying planning application ref. H05-0396-17;
Drainage Strategy by S M Hemmings accompanying planning application ref. H05-0396-17;

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

2. The use of the building shall be confined to agriculture as defined within Section 336 of the Town and Country Planning Act, 1990. This shall include the preparation and packing of plant products grown upon the site, with non-plant products limited to less than 10% of overall sales. There shall be no retail sales to visiting members of the public.

Reason: To define the term of the permission and because the site is located in an area where it is the policy of the Local Planning Authority not to permit new development unless it is appropriate and essential in that location, particularly in conjunction with agriculture, and also acceptable on amenity and highway safety grounds.

This Condition is imposed in accordance with Policy 1 of the South East Lincolnshire Local Plan, 2019.

3. Noise emitted from fixed plant and machinery shall not exceed the background noise level by more than 5dB(A) when measured as a 15 minute L(A)eq at any residential boundary not within the applicant's ownership.

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

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

4. No packing operations shall be carried out and no deliveries shall be taken at or dispatched from the site outside the following hours:
- 06:00 and 22:00 hours on Mondays to Fridays inclusive between the period 01 March 2021 and 30 June 2021;
 - 07:00 and 20:00 hours on Saturdays, Sundays and Bank or Public Holidays between the period 01 March 2021 and 30 June 2021;
 - 07:00 and 20:00 hours on Mondays to Fridays inclusive between the period 1 July 2021 and 14 March 2022;
 - 07:00 and 20:00 hours on Mondays to Fridays inclusive between the period 15 March and 15 June thereafter;
 - 07:00 and 18:00 hours at all other times including Saturdays, Sundays and Bank or Public Holidays.

Reason: In the interests of the amenity of local residents and to enable the Authority to re-assess the proposal after a period of 12 months.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

5. There shall be no HGV access to the site outside the hours referred to within condition 4 and no overnight operation of internal combustion engine operated vehicle refrigeration motors. During the period 01 March 2021 and 30 June 2021 there shall be no HGV deliveries or collections after 21:00 hours on Mondays to Fridays inclusive and 19:00 hours on Saturdays and Sundays.

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

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

6. The scheme of boundary screening shall be in accordance with details accompanying condition compliance application ref. H05-0149-18 and shall be retained in its entirety.

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

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

7. The development hereby permitted shall be carried out in accordance with the measures set out in the approved Flood Risk Assessment.

Reason: To ensure that the development does not increase the risk of flooding or be at risk of flooding.

This Condition is imposed in accordance with national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

8. The approved scheme for the disposal of surface water within the approved Drainage Strategy Report shall be permanently retained and be made available for use.

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.

9. Foul water disposal shall be disposed of in accordance with details accompanying condition compliance application ref. H05-0149-18.

Reason: To ensure that the site is adequately drained and to avoid pollution.
This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019.

10. External lighting shall be in accordance with details accompanying condition compliance application ref. H05-0149-18.

Reason: To prevent light pollution in the interest 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.

11. 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>

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

