

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H13-0840-20 **Applicant:** Mr H Myers
Proposal: Change of use of site and buildings to commercial use (Classes B1c, B2 & B8) - retrospective - approved under H13-1038-19. Modification of Condition 3 relating to hours of operation
Location: Poplar Farm Austendyke Road Weston Hills
Terminal Date: 29th December 2020

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
03	Design of New Development
04	Approach to Flood Risk
07	Improving South East Lincolnshire's Employment Land Portfolio
30	Pollution
32	Community, Health and Well-being
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2019

Sections 2, 4, 6, 9, 11, 12, 14 and 15

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
SHDC INTERNAL	0	0	0	1
RESIDENTS	1	0	0	1

CASE OFFICER ASSESSMENT

Proposal

Retrospective planning permission was granted in January 2020 for a change of use of existing agricultural buildings to an industrial use (Classes B1c, B2 and B8). Conditions 3 and 4 of that permission stipulate the following:

3. No machinery shall be operated, no processes shall be carried out and no deliveries shall be taken at or dispatched from the site outside the hours of 8am and 6pm, 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.

4. Noise from fixed plant and machinery shall not exceed a level of 5 dB(A) above the background noise level when measured as a L(A)_{eq15min} 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, 3 and 30 of the South East Lincolnshire Local Plan, 2019.

This application is to vary condition 3 (hours of operation) to "no machinery shall be operated, no processes shall be carried out and no deliveries shall be taken at or dispatched from the site outside the hours of 6am and 10pm nor at any time on Sundays, Bank or Public Holidays".

Site Description

The site is located on the southern side of Austendyke and is currently occupied by 3 agricultural buildings of brick/fibre cement and metal construction. It is currently served by a concrete access roadway which passes over a culvert serving a frontage drain.

A pair of semi-detached houses are situated to the east off the access roadway and a large house and associated buildings some 90 metres to the north-west on the opposite side of Austendyke (The Beeches Bed & Breakfast). Cedar Lodge is located some 180 metres to the west. Austendyke Hall (grade II listed) is situated some 240 metres to the east.

History

H13-0818-08 - Change of use to B1 (Business) and B8 (Storage or Distribution) - Withdrawn

H13-0898-06 - Change of use to B8 (storage and distribution) - Withdrawn

H13-1038-19 - Full - Change of use of site and buildings to commercial use (Classes B1c, B2 and B8) - retrospective - Granted 24 January 2020.

Representations

Moulton Parish Council - No response.

Environmental Protection - No objections subject to alternative conditions.

Public - Objections received (summarised):

Site has been operating beyond reasonable working hours (ie, evenings and weekends) and has been creating noise/disturbance; no conditions have been adhered to; Noise assessment not an accurate assessment of the noise emanating from the site; Units fronting the road have been working with shutter doors open, creating noise/disturbance;

Planning Considerations

The main issue in this case is whether a change in working hours would be in accordance with development plan policy.

Policy

As indicated in paragraph 47 of the National Planning Policy Framework, 2019, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

The site is located outside a defined settlement limit within the South East Lincolnshire Local Plan (SELLP), 2019. For the purposes of the SELLP, the site therefore lies within the countryside.

SELLP Policy 1 states that development in the Countryside will only be permitted that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.

Policy 7 of the SELLP indicates that new employment development outside allocated employment sites will be supported provided that the proposal involves the re-use of previously developed land or the conversion/re-use of redundant buildings. Where it can be demonstrated that no suitable building capable of conversion/re-use is available or the re-use of previously developed land is not available or is unsuitable, proposals on non-allocated sites may be acceptable provided:

- a. the development does not conflict with neighbouring land uses;
- b. there is no significant adverse impact upon the character and appearance of the area;
- c. the design is responsive to the local context;
- d. there will be no significant adverse impact on the local highway network;
- e. there will be no significant adverse impact upon the viability of delivering any allocated employment site;
- f. proposals maximising opportunities for modal shift away from the private car are demonstrated; and
- g. there is an identified need for the business location outside of identified employment areas on the Policies Map.

The above policies are consistent with advice within the National Planning Policy Framework, 2019. Section 6 supports sustainable economic growth in rural areas. It stresses that planning policies and decisions should place significant weight on the need to support economic growth taking into account local business needs. Paragraph 83 states that planning policies and decisions should promote the sustainable growth and expansion of all types of business in rural areas, both through the conversion of existing buildings and well-designed new buildings. Paragraph 84 goes on to stress that planning decisions should recognise that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements and in locations that are not well served by public transport. The use of previously developed land should be encouraged where suitable opportunities exist.

Addressing the above, the site is outside an allocated employment site and is not closely related to an existing settlement or public transport network. However, there is an identified need for industrial development within the district. The proposal supports economic growth and involves the re-use of farm buildings. Moreover, it is relatively small scale and constitutes a form of rural diversification. It is considered that a development of this scale would not have a significant adverse impact upon the viability of delivering any allocated employment site. Taking into consideration the aforementioned, plus advice within paragraph 84 of the Framework, there are no objections in locational terms.

In terms of amenity and the proposed modification of working hours, the nearest residential properties are a pair of semi-detached houses to the east off the access roadway and a large house and associated buildings some 90 metres to the north-west on the opposite side of Austendyke (The Beeches Bed & Breakfast). Cedar Lodge is located some 180 metres to the west. Austendyke Hall (grade II listed) is situated some 240 metres to the east.

It is proposed to extend working hours to between 6am and 10pm, nor at any time on Sundays, Bank or Public Holidays. The application is accompanied by a noise assessment that concludes that "the likely site noise should be at or below 40 dB at the adjacent residential properties (Cedar Lodge, Austendyke Hall and The Beeches). This meets the noise limits within permitted operating hours, and also outside permitted operating hours from 04:00 to 08:00 hours and 18:00 to 22:00 hours".

As previously indicated, local planning authorities should be promoting sustainable economic growth. However, the amenity of neighbouring residents also needs to be protected in accordance

with Policies 2, 3 and 7 of the SELLP. Environmental Protection have been consulted and have noted the concerns of residents. They are of the opinion that noise issues can be satisfactorily addressed by virtue of the noise condition, plus additional conditions stipulating that all work be carried out inside the units with the doors closed and no loading/unloading outside of 8am and 8pm.

There is no material change of circumstance relating to issues such as design and character/appearance of the area, highway safety/transportation and flood risk. The setting of Austendyke Hall further to the east would remain unaffected.

Planning Balance

Whilst the proposed extension of working hours may have some impact upon the amenity of nearby residents it is not considered to be such as to outweigh other factors in favour of the proposal, including economic growth. This is subject to the imposition of additional mitigating conditions as recommended by Environmental Protection.

Conclusion

The planning balance is in favour of the proposal. It is therefore recommended that the application be approved under delegated powers, subject to mitigating conditions.

Additional Considerations

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.

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

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.

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

Human Rights

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).

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.