

## DECISION DELEGATED TO HEAD OF PLANNING

**Application No:** H13-0873-24      **Applicant:** Mr R Bailey

**Proposal:** Change of use of site from scaffold and associated equipment store (approved under H13-1010-96) to use of site restricted within Use Class E(g)(iii)

**Location:** Penns Farm Yard Penns Place Seas End Road

**Terminal Date:** 1st January 2025

### Planning Policies

#### South East Lincolnshire Local Plan - Adopted: March 2019

|    |                           |
|----|---------------------------|
| 01 | Spatial Strategy          |
| 02 | Development Management    |
| 03 | Design of New Development |
| 04 | Approach to Flood Risk    |
| 28 | The Natural Environment   |
| 30 | Pollution                 |
| 36 | Vehicle and Cycle Parking |

#### National Guidance

#### National Planning Policy Framework December 2024

Section 2 - Achieving sustainable development  
 Section 4 - Decision-Making  
 Section 5 - Delivering a sufficient supply of homes  
 Section 9 - Promoting sustainable transport  
 Section 14 - Meeting the challenge of climate change, flooding and coastal change  
 Section 15 - Conserving and enhancing the natural environment

### Representations:

|                                       | Object | Support | No Obj. | Comments |
|---------------------------------------|--------|---------|---------|----------|
| PARISH COUNCIL                        | 0      | 0       | 0       | 0        |
| WARD MEMBER                           | 0      | 0       | 0       | 0        |
| HIGHWAYS & SUDS SUPPORT               | 0      | 0       | 0       | 1        |
| SOUTH HOLLAND INTERNAL DRAINAGE BOARD | 0      | 0       | 0       | 1        |

|               |   |   |   |   |
|---------------|---|---|---|---|
| SHDC INTERNAL | 0 | 0 | 1 | 0 |
| RESIDENTS     | 2 | 0 | 0 | 0 |

## **CASE OFFICER ASSESSMENT**

### **Proposal**

Change of use of site from scaffold and associated equipment store (approved under H13-1010-96) to use of site restricted within Use Class E(g)(iii).

The applicant has provided limited supporting information in relation to the proposed use other than the use will:

- *Operate within the UCO classification E(g)iii.*
- *Not more than 3 lorries, not exceeding 7.5 tonnes entre and leave the site on a daily basis*
- *Not more that 3 work vans entre and leave the site on a daily basis*

The hours of operation proposed are as follows:

- *730AM -730PM Monday - Friday*
- *730AM - 130PM Saturday*
- *At no time Mondays or Bank Holidays*

### **Site Description**

The application site, known as Penns Farmyard is accessed from Seas End Road and is located south westerly of a dwelling known as Penns Place. The application site is located within the open countryside for policy purposes with the nearest settlement being Moulton Seas End located to the north.

The application site is also located in flood zone 3 in accordance with EA Flood Map for planning. The South East Lincolnshire SFRA shows that there is a present day low risk, the predicated modelling shows that the application site is in an area having a hazard rating of 'danger for some'.

The site contains an open fronted shed that is clad in metal sheeting, there is also a small brick building on site. The site is bound by Heras metal fencing linked with scaffold ties. The site is overgrown (likely grassland) and it appear that it has been vacant for sometime.

### **History**

H13-1010-96 - Continuation of change of use from agricultural to scaffold and associated equipment store. Approved 14-01-97

This permission under condition 3 limited the use of the application site for the storage of Scaffold and associated Equipment Only and for no other purpose within Class B8.

### **Consultation Responses**

#### **IDB**

Thank you for your consultation on planning application H13-0873-24. Having screened the application, whilst the site in question lies within the Internal Drainage District of the South Holland Internal Drainage Board the proposed application does not meet our threshold for commenting as per our Planning and Byelaw Strategy. Therefore the Board has no comments to make.

## Highways

**ADDITIONAL INFORMATION REQUIRED** The access is to be upgraded to Lincolnshire County Council specification and a note should be added to the block plan.

-An additional plan has been received that shows an annotation that the access will be made up to LCC standards.

## Environmental Protection

No comments regarding Land Contamination or Environmental Protection

## **Representations**

This application has been advertised in accordance with the DMPO. Objections have been received from local residents based upon the following material topics:

- Amenity
- Highway Safety
- Compatible uses

## **Planning Considerations**

The proposal is for a change of use of land from a Scaffolders Storage yard to an open E(g)iii use. Limited supporting information has been provided other than, that relating to vehicle movement and operating hours.

The main issues and considerations in this case are (but are not limited to):

- Principle of Development
- Impact on Neighbouring Residents/Land Users/Land Uses
- Highway Safety and Parking
- Flood Risk

## Evaluation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (December 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted.

The Authority is able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment.

## Principle of Development

SELLP Policy 1, Part D, is concerned with the countryside, it states that *"The rest of the Local Plan area outside the defined settlement boundaries of the Sub-Regional Centres, Main Service Centres, Minor Service Centre and Other Service Centres and Settlements is designated as Countryside. In the Countryside development will 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."*

Within the reasoned justification (para. 3.2.15) the text state that *Where changes to such buildings or land uses require planning permission Policy 1 and other more detailed Local Plan policies will*

*apply and (under para. 3.2.16) the text states " Some land uses may also require a Countryside location because of their functionality, such as the plant and equipment of public utility providers or in the provision of flood mitigation infrastructure"*

This proposal is for an open Class E(g)iii use and not justification has been put forward as to why this is appropriate within a countryside location. The class allows for the following:

- (i)an office to carry out any operational or administrative functions,*
- (ii)the research and development of products or processes, or*
- (iii)any industrial process,*

*being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*

As the class does not distinguish between urban and rural appropriate uses, granting such an open permission within the countryside has potential to conflict with the aims of the overarching spatial strategy in allowing uses that are not essential to the functioning of the open countryside to operate within it.

Notwithstanding the existing use of the site (storage, explicitly that relating to scaffolding equipment), which potentially represents a departure from plan, such uses that would be accessible as a result of allowing an open E(g)iii use may have potential to undermine the the strategic aims of SELLP Policy 1.

On this basis then it is considered insufficient information has been presented to the local planning authority to demonstrate that this proposal is necessary in a countryside location nor has it been demonstrated that the proposal meets the sustainable development needs of the area in terms of economic, community or environmental benefits. The proposal is therefore considered contrary to SELLP Policy 1.

#### Impact on Neighboring Residents/Land Users/Land Uses

Policy 2 and of South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

Policy 30 is concerned with pollution and places impacts in relation to noise, disturbance and air quality as important consideration when considering proposals for planning.

NPPF Paragraph 135 states that development should create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

The proposal is for an E(g)iii use which by definition is required to be *a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit*

Whilst on the surface it may appear that such a use is commensurate located on a shared boundary with a residential dwelling (given this caveat), the open ended nature of the permission sought does not allow for an appropriate consideration of what externalities may need to be mitigated. For example certain light industrial uses may be appropriate in residential areas, subject to noise or odour assessment demonstrating that this is the case. Similar with research and development uses, testing practices may give rise to the need for mitigating conditions.

NPPF Paragraph 56 states that *Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification*

Given the tests above that that conditions need to meet, it is unlikely (given the open ended nature of this proposal) that such condition would meet those tests. It is likely to ensure that neighbouring amenity is mitigated a whole raft of conditions, that may not be related to the future development would need to be applied, this would also give rise then to the reasonableness of attaching such mitigation, as well as the potential to enforce.

Therefore, notwithstanding that Class E(g)iii are uses which can be carried out in any residential area without detriment to the amenity of that area, the lack of detail accompanying this application is insufficient, as it does not allow the LPA to understand whether mitigation would be required by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit and whether the proposed operating hours would provide sufficient mitigation from that use, upon neighbouring amenity.

On this basis the insufficient information has been presented to understand whether or not such uses, during the proposed hours of operation, without mitigation are appropriate given the proximity of the application site to residential properties. The proposal is therefore considered contrary to policies 2 and 30 of the South East Lincolnshire Local Plan as well as paragraph 135 of the National Planning Policy Framework.

### Highway Safety and Parking

Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation.

Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal. Policy 36 detail with parking and cycling provision and is also considered relevant.

Policy 36 states that all new development, including change of use, should provide vehicle and cycle parking, in accordance with the minimum Parking Standards adopted by the Local Planning Authorities (in Appendix 6).

The applicant proposed to use the existing access, though would improve to LCC standards as per highways request. The vehicular movements proposed within the supporting information are likely to be acceptable.

On this basis it is considered that the proposal would accord with SELLP Policies 2, 3 and 36.

### Flood Risk

Section 14 of the NPPF sets out the national policy basis for making assessments in relation to flood risk.

SELLP Policy 4 sets out South Hollands approach to Flood Risk the application site is located within Flood Zone 3 in accordance with EA flood maps for planning. The South East Lincolnshire SFRA shows the area to be at low risk.

It is likely that the proposal would not lead to any changes in the flood vulnerability classification (the new uses are likely to also be less vulnerable).

On this basis then the proposal would accord with SELLP Policy 4.

### BNG

The applicant has stated that *The site compromises a yard with a hard surface, a brick barn and open ended shed. There is a virtual absence of bio-diversity at the site or boundaries. In short minimal or no measurable habitat*

The Guidance (Biodiversity Gain Requirements (Exemptions) Regulations 2024) sets out the following exemption which will be relevant for many change of use applications:

#### *De minimis exemption (Regulation 4)*

The de minimis exemption is designed to cover planning permission for developments of such a small scale that no or minimal loss to habitat value is entailed. Two conditions must be met for this exemption to apply: firstly, the development must not impact an onsite priority habitat (defined as a habitat specified in a published list); secondly, the development must impact no more than 25 square metres of onsite habitat with a biodiversity value greater than zero, and no more than five metres in length of onsite linear habitat. Therefore, this exemption will apply depending on whether a habitat is impacted; a habitat being deemed to be impacted when it is lost or degraded in such a way that there is a decrease in the biodiversity value of that habitat (Regulation 4(b)). But a change of use application does require the provision of biodiversity net gain.

On a site visit it was witnessed that there was a lot of vegetation, this has potentially take affect

through the lack of use of the site, but it did not resemble the description within the applicants BNG statement 'a virtual absence of bio-diversity'. Therefore whilst there are no building operations proposed, some form of BNG related conditioning may be appropriate.

### **Planning Balance**

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

It has not been demonstrated by the applicant that this proposal is necessary in a countryside location nor has it been demonstrated that the proposal meets the sustainable development needs of the area in terms of economic, community or environmental benefits. Furthermore, insufficient information has been presented to understand whether or not such uses, during the proposed hours of operation, without mitigation are appropriate given the proximity of the application site to residential properties.

Lastly it is not clear whether this proposal would meet with the di minis exemption.

In this instance, there are no material considerations that weigh in favour of the proposal and as such, the planning balance is not in favour of the development.

### **Conclusion**

Taking into consideration these factors, the proposal is considered to be contrary with Policies 1, 2, 3, 28 and 30, of the South East Lincolnshire Local Plan (SELLP), 2019; in addition to the identified sections contained within the National Planning Policy Framework (NPPF) (December 2023).

### **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.