

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H23-0136-24 **Applicant:** Mrs K Cleary

Proposal: Proposed change from agricultural pig unit to fertilizer & cereal seed storage area & distribution centre - approved under H23-0343-87. Modification of Condition 2 to allow the use of the site to be restricted with in Use Class E (g) (iii)

Location: Warehouse & Yard Adj. Eastern Forge Stockwell Gate Whaplode

Terminal Date: 15th April 2024

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

National Guidance

National Planning Policy Framework 2023

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 9 - Promoting sustainable transport
Section 12 - Achieving well-designed & beautiful places
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
ENVIRONMENT AGENCY	0	0	0	1
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	1	0

RESIDENTS	1	0	0	1
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CASE OFFICER ASSESSMENT

Proposal

Proposed change from agricultural pig unit to fertilizer & cereal seed storage area & distribution centre - approved under H23-0343-87. Modification of Condition 2 to allow the use of the site to be restricted with in Use Class E (g) (iii).

The applicant seeks to remove/modify condition 2 of the aforementioned permission to allow for the application site to be used under Class E (g) (iii).

Site Description

The application site is located outside of the defined boundary for Whaplode, to its north east. The dwelling is set back from Stockwell Gate accessed by a drive that leads to an existing rural business and the dwelling itself. The drive runs along the side of a neighbouring residential dwelling.

The house which is detached is made up of a red facing brick, with white Upvc windows and doors. The property benefits from gardens to the front and rear, with ample off-street parking.

The application site is located within flood zone 3 in accordance with EA Maps for Planning, the South East Lincolnshire SFRA shows the application site to be 'Danger for Some' (Hazard Mapping).

History

H23-0343-87 - Proposed change from agricultural pig unit to fertilizer and cereal seed storage area & distribution centre. Approved

H23-0135-24 - Erection of directors house including garage, office & conference room - approved under H23-0342-87. Removal of Condition 6 restricting a person or persons employed either directly or engaged in a management capacity with the adjacent fertilizer & cereal seed storage & distribution centre (together with their family) approved under H23-0343-87. Pending

Consultation Responses

Highways & Suds

No Objections Having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact upon the local highway network or increase surface water flood risk and therefore does not wish to object to this planning application.

Comments: This change will allow the industrial processes within the site. In order to ensure that vehicle movements will not increase to those movements that could be associated with the existing use class then a condition should be attached to any decision notice. It shall restrict no more than 4 lorries not exceeding 7.5 tonnes to enter and leave the site on a daily basis and also not to allow any more than 6 LGV to enter and leave the site on a daily basis. As discussed with the Planner and Applicant. The proposal will not result in a detrimental impact on the public highway.

Environment Agency

No comments to make on the application

Environmental Protection

No concerns

Representations

One presentation have been received, and one objection, the representation states:

What kind of fertiliser is going to be stored - What cereal/seed is going to be stored - What are the ingredients of said fertiliser/cereal/seed - Is the fertiliser/cereal/seed hazardous - Is there going to be any odour from the fertiliser/cereal/seed - What quality/volume will be stored - How will the fertiliser/cereal/seed be transported. The warehouse is located and surrounded by narrow country lanes with traffic and pedestrians in both directions. There is no footpath. - What will be the impact on existing traffic - How noisy will the transportation be - What are the operating hours of the warehouse - Will there be security issues with storing the fertiliser/cereal/seed - Will my adjoining garden be contaminated with unwanted cereal/seed crops - Is the application for the existing warehouse, in its current format only; and therefore no other warehouses/storage units will be built

The objections state:

Stockwell Gate itself isn't fit for purpose for today's heavy vehicles. There are currently issues with LFP farm vehicles using Stockwell Gate as a cut through road instead of using the main road plus appear to be breaking the road's speed limit also. Our house literally shakes when a tractor or lorry comes past our house, which is creating cracks in the walls at the front of the house. Therefore, we can't accept more heavy traffic on the road and really due to the amount of homes now built on Stockwell Gate there should be a weight restriction to advising further damage to home owners properties. The road is very narrow in places with a sharp bend at each end of the road, which makes it difficult for today's lorries to manoeuvre safely.

Officers comments

The application site already benefits from an extant use associated with B8. There is no restriction in place on vehicle movements.

Planning Considerations

The existing site benefits from permission for being a unit to fertilizer & cereal seed storage area & distribution centre, the land use Gazetteer confirms this as a B8 use. The applicant seeks to change this use to E (g) (iii); this is described as *any industrial process, (which can be carried out in any residential area without causing detriment to the amenity of the area)*.

The following issues are relevant to this assessment.

- Scope of S73
- Principle of Development
- Environmental Issues/Amenity
- Highway Safety

Scope of Section 73

In terms of restrictions on what a S73 can be used for Planning Practice Guidance states "Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Section 73 cannot be used to change the description of the development." (Paragraph: 014 Reference ID: 17a-014-20140306)

The applicant is seeking to modify condition 2 of H23-0343-87, which on the surface is acceptable. However even if this condition is removed or modified the terms of the original permission are for 'fertilizer & cereal seed storage area & distribution centre' this permission is so explicit that the permission in itself is more restrictive than the condition applied (condition 2). Therefore, in effect the applicant is seeking to change the description of the development by amending/removing the condition, something which cannot be achieved through the S73 process.

On this basis the permission sought by the applicant cannot be achieved and would require the submission of a full planning application.

In the interest of completeness the report will assess the planning merits of the change

Principle of Development

SELLP Policy 1 sets out the spatial strategy for the district. It states that *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.*

NPPF Paragraph 88a is also relevant, it states that *Planning policies and decisions should enable: a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings*

The applicant has provided a supporting statement that demonstrates that the building formally associated with the application site no longer exists. Nor is the building fit for its original purposes as a fertilizer and cereal storage distribution centre, due to the requirement of modern agricultural practices. The building there is seeking an adaptive reuse. Class E (g) (iii) is an industrial use that is appropriate in residential areas, given the sprawl of residential properties emanating in this direction from Whapolde since the original approval it is considered that this type of industrial use is appropriate.

Whilst it may open up the building to industrial uses that do not necessarily require a countryside location the proposal would be in accordance with NPPF Paragraph 88a in that it would allow *the sustainable growth and expansion of all types of business in rural areas* through the conversion of this existing building.

It is therefore considered that whilst the SELLP 2019 is devoid of a bespoke policy to allow the conversion of countryside buildings to commercial uses, this void is caught by NPPF paragraph 88a and in so is considered acceptable in principle, in that regard.

Environmental Issues/Amenity

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. It states that "A?ç?!Suitable mitigation measures will be provided, if required. Proposals will be refused if impacts cannot be suitably mitigated or avoided".

The applicant has provided some additional information since submission. This includes the following operating restrictions:

- a. That not more than 4 lorries not exceeding 7.5 tonnes enter and leave the site on a daily basis.
- b. That not more than 6 work vans enter and leave site on a daily basis.
- c. Additionally that working hours are restricted to 7:30am to 7:30pm Monday to Friday, and 7:30am to 1:30pm on Saturday.

Environmental Protection made comments prior to this information and stated that they have 'no concerns' to the proposals. It is considered that as the existing storage distribution centre has no such restrictions on working hours and vehicle movements, this has potential to represent a betterment for neighbouring properties. Furthermore, the removal of external lighting, outside storage will also be attached to the permission in the interest of amenity. As regards noise as the proposal is for an E (g) (iii) use the impacts can be mitigated through existing environmental legislations, especially in light that Environmental Protection do not have any concerns.

On this basis it is considered that the proposal would accord with SELLP policies 2, 3 and 30.

Highway Safety

Policy 2 of the SELLP 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.

Section 9 of the National Planning Policy Framework (December, 2023) specifically relates to 'Promoting sustainable transport'. Paragraph 115 of the National Planning Policy Framework (December, 2023) advises that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

Highways had requested further details as regards vehicle movements which are outlined within the above section. Following confirmation of these details the highway authority have no objections subject to a condition linking any permission to the agreed details.

On this basis it is considered that the proposal would accord with policies 2 and 3 of the South East Lincolnshire Local Plan as well as NPPF Paragraph 115.

Planning Balance

The proposal procedurally cannot be achieved under a section 73 application for the reasons outline above. However in terms of the planning merits, the following planning balance summarises the assessment.

The proposal whilst opening up the use of the application site for potential business that do not necessitate a countryside location is considered acceptable. The proposal which is for the conversion of an existing unit would enable sustainable growth and expansion of all types of business in rural areas. Furthermore given the proximity of residential properties site is considered that the class use proposed is likely to be more appropriate than B1 industrial uses.

Whilst there is also likely to be some impacts from noise and disturbance the extant permission which offers an unrestricted B8 use is given weight. The applicant has provided details of both operating hours as well as the number and type of vehicle movements. This will be attached as condition to any permission. Furthermore there is also a need to remove the ability to install external lighting and use outside space as storage and these topics will also be controlled through condition.

It is considered that on balance the proposal is considered acceptable.

Conclusion

The proposal is refused as the applicant seeks to change the description of the original planning permission through a section 73 application.

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.