

## Appeal Decisions

Site visit made on 27 September 2016

**by Jean Russell MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28 November 2016**

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### **Appeal A: APP/R2520/C/16/3146644**

#### **Land at Station Road, Thorpe on the Hill, Lincoln**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Weir against an enforcement notice issued by North Kesteven District Council.
- The enforcement notice was issued on 15 February 2016.
- The breach of planning control as alleged in the notice is: without planning permission, the making of a material change of use of the Land; from horticultural use to a mixed use comprising horticultural use, use for the parking and storage of plant, trailers and machinery, use for the deposit and storage of building and construction materials, use for the deposit and storage of construction and demolition wastes, and use for the storage of touring caravans.
- The requirements of the notice are:
  - (i) Remove all plant, machinery and trailers from the land excluding any plant, machinery and trailers directly associated with the lawful use of the land for horticulture;
  - (ii) Remove the touring caravans from the land;
  - (iii) Remove all building and construction materials from the land;
  - (iv) Remove all construction and demolition wastes from the land;
  - (v) Cease to use the land for parking or storing the items referred to in (i) and (ii) above; and
  - (vi) Cease to use the land for the deposit or storage of the materials and wastes referred to in (iii) and (iv) above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: Appeal A is dismissed and the enforcement notice is upheld.**

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### **Appeal B: APP/R2520/W/16/3146661**

#### **Station Road, Thorpe on the Hill, Lincoln, Lincolnshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Dave Weir o/b Digger Dave Groundworks against the decision of North Kesteven District Council.
- The application ref: 15/0627/FUL, dated 14 May 2015, was refused by notice dated 28 January 2016.
- The development proposed is change of use of part of the site for storage of plant hire equipment, including the excavation of additional hardstanding.

**Summary of Decision: Appeal B is dismissed.**

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## **Preliminary Matters**

1. The enforcement notice subject to Appeal A relates to a larger plot of land than the Appeal B planning application; the 'planning site' is part of the 'enforcement site'. The notice also alleges a change of use to more uses than are subject to the planning application, but the latter included a proposal for new hardstanding, which is not described in the notice and had not been laid out on the date of my visit.
2. In an enforcement appeal, ground (a) and the deemed planning application (DPA) relate to 'the matters stated in the notice' as constituting a breach of planning control. However, the appellant has pursued ground (a) for Appeal A on the basis that permission ought to be granted for the development described in the planning application. To be precise, he seeks permission through Appeals A and B for the material change of use of the planning site to use as a plant hire storage depot, involving the storage of plant and machinery, parking of vehicles and trailers, and provision of new hardstanding. He does not seek permission to put the remainder of the enforcement site to this use, or permission for the other uses alleged.
3. Under s177(1) of the 1990 Act as amended, planning permission may be granted in relation to the whole or any part of the matters, or the whole or any part of the land to which the notice relates. This means that I can consider Appeal A on the basis described. I can take account of the proposed hardstanding, although it is not subject to the notice, because a DPA may be granted subject to conditions requiring the submission and approval of a scheme of works.
4. Since the appellant has made no representations on the deposit and storage of building and construction materials, the deposit and storage of construction and demolition wastes, or the storage of touring caravans, I have not considered the merits of or objections relating to those alleged uses.

## **Appeal A on Ground (a), the Deemed Planning Application and Appeal B**

### **Main Issues**

5. The main issues are the effect of the plant hire storage depot use on the character and appearance of the surrounding rural area; its effect on the living conditions of the occupiers of facing dwellings; and, if there is any unacceptable harm, whether the benefits of the use would justify a grant of permission.

### **Planning Policy**

6. The *National Planning Policy Framework* (the Framework) sets a presumption in favour of sustainable development. The policies set out in paragraphs 18-219 of the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice.
7. The development plan includes saved policies of the *North Kesteven Local Plan* (LP). I shall ascribe due weight to relevant LP policies according to their degree of consistency with the Framework. The *Proposed Submission Central Lincolnshire Local Plan* (CLLP) will be submitted for examination in late 2016. I am not aware as to whether any relevant CLLP policies are subject to objections and this reduces their weight, but again I will consider if they are consistent with the Framework.

### **Reasons**

#### *Character and Appearance*

8. The enforcement site is a rectangular plot of land bound by Station Road to the east, a public house and railway line to the north, a farm to the south and an area

- dominated by lakes created from former clay pits to the west. There is a row or ribbon of dwellinghouses on the opposite side of Station Road, and there are other dispersed properties nearby. However, the land falls outside of any settlement as defined in the LP, and so it is in the countryside for planning policy purposes. The wider area is dominated by farmland interspersed with lakes.
9. The enforcement site is bound along Station Road by trees and a hedgerow, but there are two openings for access to the planning site, which is the central strip across the larger plot. There is existing hardstanding on the planning site which extends from the roadside to provide a parking area and base for two breezeblock and corrugated buildings. The western part of the planning site is put to grass, as is the enforcement site, which is not enclosed off. I saw that plant, machinery and vehicles are kept on the hardsurfaced and grassed areas of the planning site.
  10. LP Policy C2 permits development in the countryside where it cannot be located within or adjacent to a settlement. LP Policy E4 only permits rural employment development if a countryside location is essential and the development cannot be located in an existing employment area; on land allocated for such use; or within a settlement. In these respects, LP Policies C2 and E4 are inconsistent with the Framework which does not restrict employment uses to urban or designated land.
  11. However, the Framework recognises the intrinsic character and beauty of the countryside, and it expects development to add to the quality of the area, respond to local character and reflect the identity of its surroundings. LP Policies C2 and E4 are consistent with the Framework and carry significant weight insofar as they seek to protect the quality and character of the countryside.
  12. I saw that the enforcement site, including the partially grassed planning site, is sufficiently green and open as to enhance the setting of Station Road and the rural character of the area. The existing buildings and hardstanding were constructed to facilitate horticulture and they are commensurate to the size of the enforcement site. If the lawful use was carried out, the parking, storage or maintenance of vehicles, plant or machinery could only be undertaken for incidental purposes.
  13. The appellant's Noise Impact Assessment (NIA) states that mobile plant operating from the appeal depot includes three JCB excavators, three tractors, a forklift and a roller<sup>1</sup>. I also note that vans, trailers, tools and equipment are parked or stored on the land<sup>2</sup>. In my view, the planning site is used for the storage of significantly more plant and machinery than would normally be required to support the lawful use even of the whole enforcement site. Moreover, some of the plant stored is used in the construction sector, and it is industrial in type, size and appearance.
  14. The proposed hardstanding would extend that existing by more than 50%, so as to replace much of the grass on the planning site. It would be new operational development on undeveloped land. In my view, it would urbanise and detract from the appearance of the site on its own, and it would facilitate the storage of plant by the western boundary – the part of the site that is adjacent to open countryside.
  15. Since I visited during working hours, some plant was out on hire, but I still saw a quantity from within the site and through the northern access to Station Road. The land is at a sufficiently low level that its use for open storage is visible from beyond the boundaries. Taking together the scale of the use, the type and size of plant machinery and vehicles stored or parked, and the scale and location of the

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<sup>1</sup> References to the NIA are to the amended version submitted to the Council in August 2015

<sup>2</sup> The appellant's statement also includes photographs of a tipper on the land but I have not been told if this is plant stored for hire, or used in association with the other unauthorised uses subject to the notice.

proposed hardstanding, I find that the development would unacceptably detract from the character and appearance of the surrounding rural area.

16. It is proposed that 2m high acoustic barriers – comprised of masonry walls, timber and gravel board fences or earth bunds – would be installed to the site frontage and end of the new hardstanding area. In my view, and although details could be controlled by condition, such substantial structures would appear discordant and obtrusive by reason of their size, location and design; they would add to the visual harm caused by the open storage use.
17. A condition could require the establishment of hedgerows to screen the storage use and/or acoustic barriers. CLLP Policy LP26 encourages landscape treatment to ensure that development can be assimilated into its surroundings, but it does not follow that shrubbery could make the appeal use acceptable. Development that harmfully encroaches upon the countryside can rarely be justified by concealment; the argument could be repeated too often. There is little information before me as whether planting hedgerows across the site could effectively screen the use or barriers, while also respecting the existing landscape character.
18. I am satisfied that the use of the appeal buildings for ancillary office and workshop purposes would not cause unacceptable visual harm, but that does not alter my objections to the impact of the open storage use. Moreover, I find below that noise associated with activities including maintenance would carry outside of the site sufficiently to disturb nearby occupiers. While the Council has not objected on this ground, I consider that there is potential for noise pollution which could exacerbate the harm caused by the use to the character of the countryside.
19. I conclude that the plant hire storage depot use causes unacceptable harm to the character and appearance of the surrounding rural area, in conflict with LP Policies C2 and E4, and the Framework. It conflicts with CLLP Policies LP2, LP5, LP17, LP26 and LP55 which would permit the expansion of businesses outside of allocated employment sites where that the development would be of a scale commensurate with the rural character of the location; not have an adverse impact on the character and appearance of the area; and respect existing landscape character.

### *Living Conditions*

20. The Council and nearby residents object that the plant hire storage depot use causes unacceptable noise and disturbance through the movement of plant; idling engines; use of reversing alarms; jet washing; and other maintenance activities such as the hammering and welding of metals.
21. Subject to a condition, the depot would operate from 07.00-21.00 hours Monday to Friday, and from 07.30-16.30 hours on Saturdays. It is essential that the use can take place then, because plant is hired out first thing, returned at the end of the day and maintained during the evening. The movement of plant typically involves the exit and return of two or three vans and/or trailers plus construction vehicles.
22. *British Standard BS4142: 2014* advises that the significance of industrial and/or commercial sound depends upon the margin by which the rating level of the sound exceeds the background level and the context<sup>3</sup>. A difference of around +5dB is likely to indicate an adverse impact, depending on the context. The NIA suggests, and I agree, that the main sources of background noise here would be traffic on Station Road and the A46, and trains on the railway. The NIA includes data from a noise survey undertaken between 09.00-21.00 hours and 07.00-11.00 hours on

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<sup>3</sup> Background noise is the underlying level of sound over a period; it does not reflect the occurrence of transient and/or higher sound level events, it is generally governed by continuous or semi-continuous sounds.

- Friday 6 and Monday 9 June respectively: free field day time noise levels averaged at 54dBL<sub>AEQ1hr</sub> (equivalent continuous sound over 1 hour), from a range of 49-56.
23. *BS8233: 2014* also provides guidance for the control of noise; it recommends that internal ambient noise levels be limited to 35dBL<sub>AEQ</sub> in living rooms in residential properties from 07.00-23.00 hours. The NIA assessed different activity scenarios at the appeal depot and found that resultant cumulative noise levels at the nearest dwellings would exceed 35dBL<sub>AEQ1hr</sub> during some 'normal operations'. Unless the effects of the use can be mitigated, it would cause unacceptable disturbance.
24. The NIA recommends that noisy maintenance activities arising during 'normal operations' take place in the workshop with the doors and windows closed; this would reduce noise ratings to no more than 4dB above the average background level 90% of the time between 07.00 and 21.00 hours, in accordance with BS4142. The Council indicated that a condition could be imposed to ensure that servicing and repairs take place inside the building with doors and windows shut.
25. However, maintenance, cleaning and repair activities currently take place indoors and outdoors. Local residents state that some of the plant is too large to fit inside the workshop; whether or not that is true, the appellant has not shown that he could carry out all routine servicing safely inside the building during the working hours. He would accept the suggested condition but I find that it would be unreasonable. I am also unclear as whether there is a risk of 'worst case scenarios' occurring, when there are external and internal activities such that shutting the workshop doors and windows might not bring noise down to acceptable levels.
26. As noted above, the NIA recommends that acoustic barriers are constructed beside the jet wash and plant storage areas; these works could be ensured by condition. Table 4 in the NIA indicates that single event noise levels (SEL), when corrected and adjusted for number of operations, period and distance, could be attenuated by the barriers by some 5dB(A), and internal ambient noise levels in the nearest dwellings would be limited to 35dBL<sub>AEQ</sub> in accordance with BS8233.
27. However, the SELs seem to show the peak noise from sources such as the idling of engines, the movement of plant and jet washing. Those activities would take place intermittently; indeed, the NIA notes that there are long periods during the day when there is no activity on the site. It seems that local residents do not suffer continuous disturbance from the use, but intrusion from particularly loud noises at different times of the day and evening. I am not persuaded that converting SELs to equivalent continuous noise levels depicts the impact of the use on nearby occupiers or reflects the guidance in BS4142.
28. The NIA suggests that noise from passing cars would be heard at 61-64dB(A) at the nearest dwellings; unadjusted site SELs are higher at 78-93dB(A). I observed that, outside peak times, Station Road is not busy. From the residential kerbside, when vehicles were not passing, I could hear grass on the enforcement site being cut. I find that background noise will be relatively low within the facing dwellings, especially after the evening rush hour. It has not been shown that acoustic barriers would prevent unacceptable disturbance from higher sound activity.
29. The NIA recommends that remote control electric gates are installed at the main (northern) access of the planning site, to minimise the idling of engines, and that plant is stored only by the western boundary. Again, these measures could be ensured by condition, but it has not been shown that either or both would reduce noise from the movement and maintenance of plant to acceptable levels. The NIA recommends that engines and the jet wash power pack are switched off when not

- in use, and jet washing is kept to a minimum, but conditions requiring such measures would not be precise or enforceable.
30. For these reasons, I consider that the mitigation measures recommended in the NIA would not suffice to reduce noise from the appeal use to acceptable levels at facing residential properties. Adding a little weight to that finding, the NIA states that, if noise from the site is averaged over 07.00-23.00 hours, levels would accord with BS8233 and have a low impact – but this statement is unhelpful because there is no proposal for the depot to operate over those 16 hours per day.
31. I have a final concern – although this is not decisive – that the NIA might not have recorded background noise properly to start with. BS4142 advises that background noise should be determined in the absence of the sound that is under consideration – but it was surveyed on the site<sup>4</sup> while the use ‘was operating...with vehicles entering and leaving’. I note that activities ‘were kept to a minimum and every vehicle movement [was] logged and edited from the data record’ but it seems unlikely that a survey taken on the site during working hours could properly show background noise levels at nearby dwellings when the use is not operating.
32. Given the distance to facing dwellings, I consider that the operation, movement and maintenance of plant need not cause unacceptable fumes, dust and spray. Indeed, local residents were concerned about such matters in part because they feared the spread of contaminants, but that is subject to separate legislation. I also find that a condition could control the intensity and orientation of security lighting on the site, so to prevent unacceptable light pollution at nearby properties.
33. Nonetheless, and although the Council’s Environmental Health officer did not object, I conclude that the appeal use would cause unacceptable harm to the living conditions of the occupiers of facing dwellings through noise and disturbance. It would conflict with LP Policy C5, the Framework and CLLP Policies LP2, LP5, LP26 and LP55, which expect development to not adversely and unacceptably affect the amenities enjoyed by other land users; secure a good standard of amenity for occupants of buildings and land; and avoid noise giving rise to significant adverse impacts on quality of life or the amenities of occupiers of neighbouring properties.

### *Benefits*

34. The Framework is clear that the planning system should promote sustainable economic growth in rural areas to support jobs and prosperity. It supports the sustainable growth and expansion of all types of business in rural areas. CLLP Policies LP2, LP5 and LP55 would permit development in the countryside and the expansion of businesses outside of allocated employment sites, provided that the rural location is justifiable to maintain or enhance the rural economy.
35. The application form states that the use provides employment for three people and I do not under-estimate the importance of those jobs to the individuals concerned. I accept that the business will contribute to the local economy, including the key construction sector, and its future might be more secure if I allow the appeals. However, the appellant not otherwise described any public benefits of the use, and he has not shown that the depot can only operate from this site. He states that he could not move because he has nurtured the business here and relocating would not be viable, but there is no information on his finances or with regard to alternative sites to support those claims.

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<sup>4</sup> Noise was surveyed from a position on the site 20m back from the kerb, since the nearby dwellings stand at about the same distance back from the opposite side of the road.

36. LP Policy C2 permits rural development that is located to provide opportunities for access by public transport, walking and cycling. Station Road is on a bus route and within walking or cycling distance of nearby settlements; it might be possible for staff to travel to and from work without a private vehicle. In these respects, the site is not in an unsustainable location – but it is not so accessible that there is a positive environmental benefit as to outweigh the harm caused by the use.
37. The Framework and CLLP Policies LP2, LP26 and LP55 encourage the effective and efficient use of previously developed land and reuse of existing buildings – but the planning site is partly undeveloped, and the development would not make effective use of land if it would result in unacceptable visual harm and noise. I conclude that the appeal use gives rise to significant adverse effects, in conflict with LP Policies C2, E4 and C5, the Framework and CLLP Policies LP2, LP5, LP17, LP26 and LP55, and the benefits of the use are not sufficient to outweigh the harm.

#### *Other Matters*

38. Local residents object that the comings and goings of heavy vehicles associated with the appeal use cause a loss of highway safety. I saw that Station Road is a through road which is able to carry passing traffic but not used to capacity. I agree with the Highways Authority that imposing conditions to require improvements to the northern site access, closure of the southern access and the provision of on-site turning space would suffice to ensure the safe movement of traffic.
39. However, the appellant has not explained – and the Council does not seem to have asked – how the enforcement site would be accessed if the depot is developed as proposed and the southern access is closed. It is unclear as to whether my allowing these appeals would create a need for new buildings and hardstanding to support the lawful use of the enforcement site<sup>5</sup>. That land is in the appellant's control, but the lack of information regarding the potential implications of this development adds a little weight to my view that the appeals should not succeed.

#### *Conclusions*

40. The Council's planning officer recommended that the planning application subject to Appeal B be approved, but I am not bound to agree. For the reasons given and with regard to all other matters raised, I conclude that Appeal A should fail on ground (a) appeal and the DPA should be refused. Appeal B should be dismissed.

### **DECISIONS**

41. Appeal A is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
42. Appeal B is dismissed.

*Jean Russell*

INSPECTOR

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<sup>5</sup> I saw no evidence of any horticultural use, but the notice alleges that the enforcement site is in a mixed use and there is no suggestion that the lawful use has been abandoned.