
Appeal Decision

Hearing Held on 4 May 2021

Site visit made on 28 April 2021

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 17th May 2021.

Appeal Ref: APP/R2520/W/20/3254834

Thorpe Grange Farm, Newark Road, Aubourn, Lincoln LN5 9EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Nick Falkinder of LEP Developments Ltd against the decision of North Kesteven District Council.
 - The application Ref 19/1382/OUT, dated 2 October 2019, was refused by notice dated 2 January 2020.
 - The development proposed is Erection of industrial/commercial units at Lincoln Enterprise Park (re submission of application 19/0135/OUT).
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of industrial/commercial units at Lincoln Enterprise Park at Thorpe Grange Farm, Newark Road, Aubourn, Lincoln LN5 9EJ in accordance with the terms of the application, Ref 19/1382/OUT, dated 2 October 2019, subject to the conditions in the attached schedule.

Application for costs

2. Prior to the Hearing an application for costs was made by Mr Nick Falkinder of LEP Developments Ltd against North Kesteven District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline form, with access, landscaping, layout and scale to be considered. Appearance is the only matter reserved for future consideration.
4. The appeal has been dealt with under a combined procedure. I was satisfied that I had sufficient evidence in writing relating to the first main issue, but the second main issue would benefit from further testing by questioning at a Hearing and this approach was agreed by both parties.

Main Issues

5. The main issues are:
 - The effects of the proposed development on the character and appearance of the surrounding area; and

- Whether the appeal site is in an appropriate location for employment development with particular reference to whether it is classed as a Local Employment Site.

Reasons

Character and Appearance

6. Lincoln Enterprise Park is an established employment area including a range of small to medium sized industrial/commercial units. The appeal site lies immediately adjacent to it. There is no doubt that the site is outside of the limits of any settlement and it is not, in visual terms, well related to any nearby settlement. In planning terms, it is within open countryside. The group of existing commercial buildings and dwelling at Lincoln Enterprise Park form a discrete enclave of development in the countryside. The existing landscaping forms a clear separation from the open agricultural fields beyond. Whether the site is considered to be part of the Lincoln Enterprise Park 'Local Employment Site' (LES) in policy terms is discussed in more detail in relation to the second main issue below.
7. The area around the A46 dual carriageway contains a number of commercial developments and urban features. These include the existing Lincoln Enterprise Park, and 'Fosseway 46' another employment development near to Thorpe on the Hill. Closer to the city of Lincoln around Newark Road and Roman Way there are a range of uses including car sales garages, food and drink uses and a large garden centre. Away from the dual carriageway there are a scattered network of small villages and hamlets connected by rural lanes.
8. The area in which the appeal site lies has characteristics which are typical of the Terrace Sandlands landscape character sub-area as set out in section 6.2 of the North Kesteven Landscape Character Assessment 2007 (LCA). The area is a largely open and flat arable landscape, with large field patterns interspersed with field hedgerows and sporadic areas of trees forming woodland blocks and shelter belts. I consider the overall sensitivity of the area where the appeal site is located and around the A46 to be low, rising to medium further away from the dual carriageway. There are few sensitive receptors in the locality which persuade me that the sensitivity should not be identified as any higher.
9. I concur with the LCA that the A46 corridor represents a 'pressure for change and landscape detractor' in this area; a corridor of increased activity, vulnerable to development pressure within the landscape, the dual carriageway being a detractor in itself which severs the landscape to the north and south.
10. The only matter reserved for future approval is the appearance of the development, and the appellant seeks to continue the form and type of small business units at Lincoln Enterprise Park. The submitted cross section plan¹ confirms that the buildings would be no higher than the existing. The existing buildings provide a reference when observing the site from the various viewpoints set out in the appellant's landscape evidence² and within the Council's evidence.
11. There is an existing mature hedge of reasonable height, including trees, around much of the appeal site and the existing Enterprise Park as well as its access

¹ Phase 7 Proposed Site Plan - 1536L/17/12a

² Appendix 7, Statement of Case – Landscape and Visual proof of evidence, Influence, June 2020

- road to the A46. The submitted landscape planting plans³ provide for a good amount of additional buffer planting which would assist in screening both the proposed development and the existing employment park, together with smaller areas of planting around the proposed buildings.
12. The existing development at Lincoln Enterprise Park can be seen from a number of locations. I found the clearest views can be obtained from the adjacent public right of way and public highways – around the A46, the eastern section of South Hykeham Road, the bridge over the A46, and Fosse Lane just south of Thorpe on the Hill. Longer range views are limited and the various copses of trees in the vicinity, as well as the existing landscaping around the Lincoln Enterprise Park itself, mean that there are glimpsed and filtered views only and mainly of the rooftops. There are few dwellings in the area which would have views of the proposals.
 13. The A46 is not the only detractor in the vicinity of the Lincoln Enterprise Park. Fosseway 46 includes a range of new and converted commercial buildings. I saw the dark-coloured new workshop building on my site visit which, together with its parking area, is readily visible from the A46. It lies within the same landscape character area as the proposed development, and is in relative close proximity to the appeal site, but they differ in terms of the presence of existing buildings and existing landscaping. The appeal site is well set back from the A46 and cannot be described as being 'alongside' the A46 as Fosseway 46 is. There are few locations where both developments can be seen in the same views, but I acknowledge that the two employment developments provide a context for the scattered urbanisation of land around the A46 leading into the city of Lincoln.
 14. I observed on my site visit that the existing Lincoln Enterprise Park is well-kept and of acceptable appearance, with landscaping maintained in good order. Whilst appearance is a reserved matter, the evidence indicates that the same form of development would be continued within the proposed 'Phase 7' and as such I have no concerns that proposed development would cause visual harm to the site or its immediate surroundings. I am satisfied that the planting plans, to be secured by condition, would provide adequate additional screening and that any failure of plants could be rectified by the appropriate triggers in the condition, and the proposed maintenance regime.
 15. Whilst some parts of the proposed development would undoubtedly be visible from certain locations, particularly during the winter, the sensitivity of the landscape is low and I find that there would be no significant harm to the character and appearance of the surrounding rural area. The proposed landscape screening would be sufficient to mitigate against any visual impacts. Consequently the proposed development would not conflict with NLLP Policy LP5 (tier 4 part ii) which requires employment development to not harm the character of the locality, Policy LP17 which seeks for development proposals to respond positively to the landscape, Policy LP26 c) which requires proposals to respect landscape character and relate well to the site and surroundings, and LP55 E(d) which seeks for non-residential developments to be of a size and scale commensurate with the proposed use and the rural character of the location.

³ Soft Planting Plan 01 – N0614(96)001 and Soft Planting Plan 02 – N0614(96)002A

16. The detailed design and appearance, including use of materials, would be dealt with at reserved matters stage. In assessing only the scale and layout of the proposed buildings I do not find conflict with Government planning guidance set out in the National Design Guide 2019 nor paragraph 130 of the National Planning Policy Framework (the Framework). There is no evidence before me to suggest that the landscape is valued therefore I find no conflict with paragraph 170(a) of the Framework.

Employment Site

17. It is an agreed matter between the parties that the existing employment units at Lincoln Enterprise Park comprise a Local Employment Site (LES). The dispute lies over whether the appeal site comprises part of the existing LES and as such is subject to the criteria within 'tier 4' of Policy LP5 of the CLLP.
18. Tier 4 of CLLP Policy LP5 is supportive of appropriate proposals for new and redeveloped B1/B2/B8 employment development on non-allocated but existing local employment sites. The Council confirmed that the proposed development does not conflict with point i) of tier 4 in relation to conflict with neighbouring land uses, and point iii) in relation to highway impacts, nor the second part of point ii) in relation to neighbouring amenity. They cite conflict only in relation to the first part of point ii) – that the scale would harm the character of the locality. The parties agreed that should I find that the site lies within the LES, then there is no requirement to carry out the more detailed tests required by 'tier 5' of Policy LP5; 'Other Employment Proposals'.
19. The Council take the view that the site is not within the LES nor any of the other higher order categories of employment areas set out in Policy LP5, and is therefore open countryside and subject to more restrictive policy requirements. There are six tests to be met for development in such locations set out within tier 5. Those relevant to this appeal seek for it to be demonstrated that i) there are no suitable or appropriate sites or buildings within allocated sites or within the built-up area of the existing settlement; and v) there is no significant adverse impact on the viability of delivering any allocated employment site. The Council also cites conflict with point iii) in relation to character and appearance.
20. When reading Policy LP5 as a whole, it is clear that it is supportive overall of proposals which assist in the delivery of economic prosperity and job growth to the area. In this respect, it is compliant with paragraphs 80 to 83 of the Framework. Supporting text paragraph 3.5.7 recognises that as a predominately rural area, some developments of considerable scale are quite naturally located in the countryside or at the edges of rural settlements, and that this kind of development is not exceptional.
21. If it is necessary for an LES to expand as a result of the continuing success of the businesses which occupy it, I fail to comprehend how this could take place without extending the LES outwards onto adjoining land. By its nature as an existing employment area outside of any defined settlement, this would be highly likely to be undeveloped greenfield land. A re-configuration or extension within the existing built-up area of the LES may be possible, but this would be at the expense of existing car parking and landscaped areas, or even upwards which would have visual implications.

22. I cannot find any reference within Policy LP5 which relates to a preference for previously developed land over greenfield land, and the Policy is not only supportive of the expansion of existing businesses; it also supports new employment development on LES's. It also does not distinguish between speculative development or one where a specific end-user is committed to a site.
23. I heard about the success of LEP with all business units currently being fully occupied, and that several existing occupiers who wish to expand are keen to stay on the site for a number of reasons. I saw on my site visit that the existing site is tightly constrained with buildings, access roads and car parking areas and some areas of landscaping, with little opportunity to expand within the confines of the 'core area' of the LES.
24. The appeal site boundaries include a post and rail fence and vegetation. The boundary treatment was specifically approved by condition on the previous Phase 5/6 planning application⁴. The wording of the condition is clear in that its purpose was to demark the extent of the LEP with the surrounding open countryside. The parties agreed that the discharge of a condition does not denote the lawful use of the land.
25. However the discharge of that condition and the dispute over whether the approved boundary treatment demarks land within the LES is not central to my findings. I find that the appeal site is appropriately located for an extension of the existing LEP. There is an identified demand, largely from existing occupiers who wish to expand, for the form of development proposed. I give significant weight to paragraphs 80, 82 and 83 of the Framework. The proposals would help create the conditions in which businesses can invest, expand and adapt, support economic growth and productivity, recognising the specific locational requirements of different sectors and enabling the sustainable growth and expansion of all types of businesses in rural areas.
26. The appeal site is in open countryside given the unallocated nature of the site and its location outside of any defined settlement, but this fact in itself does not necessarily limit the proposed development. NLLP Policy LP2 (part 8) is supportive of development in the countryside which is allowed by Policy LP5. Policy LP55 is also of relevance, and at Part E it supports non-residential development in the countryside where the location is justified by means of proximity to existing established businesses.
27. I have already found that the proposed development would not result in any significant harm to the character and appearance of the area. There is no suggestion of conflict with neighbouring land uses, harm to amenities of neighbouring occupiers nor any unacceptable impact on the highway network. Consequently, the proposed development is in an appropriate location for employment development and would meet the relevant criterion of NLLP Policy LP5 tier 4. As such, it is unnecessary to test the proposed development against tier 5 'Other Employment Proposals'.
28. In concluding against NLLP Policy LP5, I also find that the proposal accords with paragraph 80 of the Framework in placing significant weight on the need to support economic growth and productivity, paragraph 82 in recognising the specific locational requirements of different sectors, and paragraph 83 which

⁴ 16/01625/FUL and 17/1857/DISCON (Appellant Statement of Case Appendices 3-6)

requires decisions to enable the sustainable growth and expansion of all types of businesses in rural areas.

Conditions

29. I have considered the suggested planning conditions against the advice given in paragraph 55 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the PPG. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability. Pre-commencement conditions were agreed at the Hearing by the appellant.
30. I have attached conditions limiting the life of the planning permission and setting out the requirements for the submission of reserved matters. I have imposed a condition relating to the approved plans, including a plan detailing the maximum heights of the employment units which I requested at the Hearing in the interests of certainty.
31. A condition limiting the use classes to those commercial and industrial set out in the application is necessary to prevent any otherwise permitted change of use (including those within use class E, which include town centre uses) which if uncontrolled could result in harm to the vitality and viability of town centres.
32. There are a number of trees and hedges on the site which provide important screening of the development as well as biodiversity value therefore conditions are necessary to protect them during construction. An acceptable detailed landscaping scheme has been submitted including details of plant locations, species, size and a maintenance scheme therefore condition 6 is unnecessary however a condition is required in order to ensure the scheme is carried out as approved in a timely fashion, and that it is properly maintained.
33. A condition is necessary to ensure the approved drainage scheme and measures set out in the submitted flood risk assessment and drainage strategy are implemented and retained in the interests of satisfactory and sustainable drainage. To ensure that there is sufficient parking, turning and loading space to meet the needs of the development a condition is required in the interests of highway safety.

Planning Balance and Conclusion

34. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

S Hunt

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Shruti Trivedi
Nick Grace
Nick Falkinder
Dan Rontree
Sam Elkington

Solicitor, Roythornes
Planning Consultant, Grace Machin
Lincoln Enterprise Park
Heronswood Architecture
Boothby Property Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Shelly Delderfield
Alan Gray

Area Planning Officer
Economic Development Manager

DOCUMENTS SUBMITTED AFTER CLOSE OF THE HEARING

- 1 Phase 7 Site Layout and Site Section 1536L/17/12a

Schedule of Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) Details of the appearance shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan	1536L/17/13 & 1536L/17/15
Soft Planting Plan 1	(96)001 Rev A
Soft Planting Plan 2	(96)002 Rev A
Phase 7 Proposed Site Plan	1536L/17/12a
- 5) No element of any building on any part of the development hereby permitted shall exceed 7.75 metres in height as measured from existing ground level.
- 6) The units hereby approved shall be used for Classes E(g) (i) (ii) and/or (iii) and/or Class B8 and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 7) No development shall take place until an arboricultural method statement and scheme for protection of the retained trees/hedgerows has been agreed in writing with the District Planning Authority. This scheme shall include;
 - a) A plan showing details and positions of the ground protection areas;
 - b) Details and position of protection barriers;
 - c) Details and position of underground service/drainage runs/soakaways and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site; and
 - d) Details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

All works/development shall be carried out in full accordance with the approved arboricultural method statement and tree/hedgerow protection scheme.
- 8) The following activities must not be carried out under any circumstances.

- a) No fires to be lit on site within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on or adjacent to the proposal site.
 - b) No equipment, signage, fencing etc shall be attached to or be supported by any retained tree on or adjacent to the application site,
 - c) No temporary access within designated root protection areas without the prior written approval of the District Planning Authority.
 - d) No mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree/hedgerow on or adjacent to the application site.
 - e) No soakaways to be routed within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - f) No stripping of top soils, excavations or changing of levels to occur within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - g) No topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - h) No alterations or variations of the approved works or protection schemes shall be carried out without the prior written approval of the District Planning Authority.
- 9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out within 6 months of the first occupation of any building or completion of the development, whichever is soonest. The landscaping shall be retained and maintained in accordance with the approved scheme for the lifetime of the development, and any trees or plants which within a period of 7 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) None of the buildings hereby permitted shall be occupied until the drainage works and measures set out in the Flood Risk Assessment and Drainage Strategy 19/698 dated October 2018 have been completed to the satisfaction of the Local Planning Authority.
- 11) The arrangements for parking/turning/manoeuvring/loading/unloading of vehicles shown on the approved plan 1536L/17/12a shall be made available at all times for such purpose when the development is in use.