



Appeal Decision

Site visit made on 13 January 2022

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 FEBRUARY 2022

Appeal Ref: APP/U2615/W/21/3272101

Land adjacent to Asda, New Acle Road, Great Yarmouth NR30 1RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr J Maitland against the decision of Great Yarmouth Borough Council.
 - The application Ref 06/20/0438/F, dated 20 August 2020, was approved on 6 November 2020 and planning permission was granted subject to conditions.
 - The development permitted is "Removal of condition 1 and variation of conditions 2, 3 and 6 of planning permission 06/19/0180/CU".
 - The condition in dispute is No 1 which states that: *"This permission expires on 6th November 2025 and unless on or before this date application has been made for an extension to the period of permission and such application is approved by the Local Planning Authority the use shall be discontinued."*
 - The reason given for the condition is: *"In order to retain control over the use of the site until the effects of the proposal have been experienced and in the interest of the amenities of the locality."*
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Decision

1. The appeal is allowed and the planning permission Ref 06/20/0438/F for removal of condition 1 and variation of conditions 2, 3 and 6 of planning permission 06/19/0180/CU at land adjacent to Asda, New Acle Road, Great Yarmouth NR30 1RL granted on 6 November 2020 by Great Yarmouth Borough Council, is varied by deleting condition 1.

Application for costs

2. An application for costs was made by Mr J Maitland against Great Yarmouth Borough Council. This application is the subject of a separate Decision.

Background and Procedural Matters

3. Planning permission¹ was first granted in May 2014 for a change of use of the site to storage of pipes and metals. That permission was for a 5 year period. An extension to that time period was subsequently granted, which expires in May 2024.² The use for storage of pipes and metals had ceased by 2020.
4. In October 2019 a temporary permission³ for a 2 year period for use as open storage was granted but I understand that the site was not immediately used for that purpose. The appeal application sought to remove condition 1 and to

¹ 06/14/0132/CU

² 06/18/0212/F

³ 06/19/0180/CU

vary conditions 2, 3 and 6 of the 2019 permission. The application proposed use of the site for storage of containers.

5. This submitted details of storage containers and lighting together with an updated Habitats Regulations Assessment (HRA). Permission was granted for the variation of conditions 2, 3 and 6 in accordance with those details. Condition 1, which limited the period of the permission to 2 years was replaced by a condition imposing a 5 year time limit. It is that condition which is subject to this appeal.
6. The Great Yarmouth Local Plan Part 2 (Part 2 LP) was adopted in December 2021, after submission of the appeal. The appellant has commented on the relevant policies in that Plan. The Part 2 LP supplements the Core Strategy⁴ (CS) which together form the development plan.

Main Issue

7. The main issue is whether or not condition 1 is necessary and whether or not it meets the other tests that are set out in national policy.

Reasons

8. The site is a long and narrow area which is enclosed by palisade fencing and lies between the Asda supermarket and the A47, the latter being on a raised embankment. There are car parking areas on both sides of the supermarket and adjacent to each end of the site. Access to the site is via a road which runs to the east of the supermarket.
9. There are two rows of dark green containers which are arranged in the centre of the site. These are rented to customers for use as self-storage. There are lighting columns around the site perimeter. Solar panels are positioned above some of the containers. The approved plan shows 116 containers, 80 solar panels and a site office housed in a container next to the site entrance.
10. The site is within the Development Limits of Great Yarmouth as defined in the development plan. Policy GSP1 of the Part 2 LP supports development in principle in this area and Policy B1 of that Plan supports business development including storage subject to its compatibility with existing allocated and permitted uses in the vicinity. The storage use is compatible with the adjacent retail use and the development accords with those policies. It is in accordance with Policy CS6 of the CS which encourages the redevelopment and intensification of existing employment sites.
11. The site lies within the Waterfront area as designated in the CS. This area includes land on both sides of the Rivers Bure and Yare. Policy CS17 aims to create a unique and high quality environment for housing, shopping and offices. Proposals should seek to transform Great Yarmouth's arrival experience by developing a network of attractive, vibrant and well-connected neighbourhoods to create a new gateway to the town. The CS anticipates that regeneration of the Waterfront area will start to take place during the last six years of the Plan period, that is from 2024 to 2030.
12. Although the site is next to the A47 and visible at one of the gateways into the town, it is at a lower level than the road and partially screened from view by

⁴ Great Yarmouth Local Plan: Core Strategy 2013-2030 (2015)

trees along the embankment. To the extent that the site is seen through the trees, the lower level of the site relative to the road and the subdued colour of the containers ensure that they are unobtrusive. In the context of the bulk of the adjacent supermarket building, the containers are scarcely noticeable from that road.

13. The containers are neatly arranged in the centre of the site with hard surfacing around them and contained within the boundary fencing. The solar panels and lighting columns are limited in scale and height, the lighting columns being 5 metres high as required by condition 6 of the planning permission. The site is visible from the footpath along the river, from the railway station and from New Acle Road to the east. The development has limited visual impact however because the containers are enclosed by the boundary fencing which is limited in its extent relative to the supermarket building.
14. To the west of the site is Breydon Water which falls within The Broads Authority's administrative area. That authority did not object to the application. The Planning Officer's delegated report states that the development would not have an adverse effect on the visual amenity of the Broads and the surrounding area. The road embankment and the bridge screen the site from Breydon Water and I concur with the Planning Officer's view on this point. I find, for the reasons given that the development is visually acceptable in the context of its surroundings.
15. The Planning Practice Guidance⁵ (PPG) states that a temporary permission may be appropriate to allow assessment of the effect of the development on the area or where it is expected that the planning circumstances will change at the end of the period. The PPG goes on to state that it will rarely be justifiable to grant a second temporary permission and that further permissions can normally be granted permanently or refused if there is a clear justification for doing so.
16. The reason for condition 1 as stated on the decision refers to the Council retaining control until the effects of the development have been experienced. The site has been used for storage for approximately 7 years, firstly for storage of pipes and metals and subsequently for containers. While containers have been stored for a limited period of time there is no evidence before me that these give rise to any harmful effect, and indeed the Council does not claim that there is any such effect. An adequate period has been allowed to assess the effect of the development. On the basis that it has not resulted in any harmful effect, this would indicate that a permanent permission should now be granted.
17. There is also no evidence before me that would indicate that permanent storage use of the site would be prejudicial to the aims of Policy CS17 to regenerate the area and to create a high quality environment. While I understand that supplementary planning documents (SPD) have been produced for parts of the Waterfront area, no SPD has been produced for the part of the area including the site. The appellant points out that the location of the site beyond the supermarket together with its location in Flood Zone 3a would constrain the development options that are available. There is no evidence before me to demonstrate that the appellant's view is unrealistic.

⁵ ID: 21a-014-20140306

18. In the absence of any demonstrated harm to the character and appearance of the area, permanent use of the site for storage would not conflict with Policies CS9 and CS17 of the CS which require high quality distinctive places, or with Policy CS11 which requires safeguarding and enhancement of landscape character.
19. The site is about 50 metres from Breydon Water which is part of the Outer Thames Estuary Special Protection Area (SPA), the Breydon Water SPA and Ramsar site. This is also a Site of Special Scientific Interest (SSSI) and a Local Nature Reserve (LNR). A HRA including a shadow Appropriate Assessment has been carried out by the appellant. Natural England stated that it had no comment on the proposal.
20. The screening test carried out under the HRA concluded that storage use would have potential to pollute the designated sites. The most likely pathway for effects on the qualifying bird species would be the accumulation of toxins which could affect the health of those species and their population. The level of such effects is likely to be low in view of the limited size of the site at about 0.5ha.
21. Condition 5 of the planning permission excludes the storage of hazardous, toxic or poisonous substances at the site. That condition also restricts storage of other materials that could give rise to pollution. The lighting scheme has been demonstrated to avoid any adverse effect on the nearby habitats and condition 7 requires its retention. Subject to those conditions, I conclude that there would be no likely significant effects on both the Outer Thames Estuary SPA and the Breydon Water SPA and Ramsar site. There would be no likely adverse effect on the SSSI and LNR. The development accords with Policy CS11 of the CS which requires conservation and enhancement of designated nature conservation sites. It also accords with Policy E6 of the Part 2 LP which requires avoidance or mitigation of pollution.
22. A Flood Risk Assessment was submitted with the application which shows that the actual flood risk to the site from overtopping is high only during a 1 in 1,000 year event, allowing for climate change. In this scenario the site would be expected to flood to a depth between 0.08m and 1.58m. The assessment includes a flood warning and evacuation strategy. The development accords with Policy E1 of the Part 2 LP in this respect. The assessment was accepted by the Council and no specific concern has been raised regarding flood risk that would justify the imposition of a condition restricting the period of the permission.
23. For these reasons the limitation on the period of the permission imposed by condition 1 has not been justified as being necessary. I conclude that condition 1 is neither necessary nor reasonable. The condition therefore does not meet the tests for conditions as set out in the National Planning Policy Framework.

Conclusion

24. For these reasons I conclude that the appeal should be allowed.

Nick Palmer

INSPECTOR

