



Appeal Decision

Site visit made on 21 November 2022

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/B2002/C/22/3302724

**Land r/o Paragon House, Kiln Lane, Stallingborough, North East
Lincolnshire, DN41 8DQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by KIA UK Limited against an enforcement notice issued by North East Lincolnshire Council.
 - The notice was issued on 9 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of lighting columns and associated lighting units on the land.
 - The requirement of the notice is to remove the unauthorised lighting columns and associated lighting units.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of lighting columns and associated lighting units on land r/o Paragon House, Kiln Lane, Stallingborough, North East Lincolnshire, DN41 8DQ referred to in the notice, subject to the following condition:

The lighting units hereby permitted shall not be switched on or operated until a scheme detailing:

- i. which lighting units may be operated;
- ii. the intensity and colour balance of the lighting; and
- iii. the installation of shields to control any light spill beyond the site boundary

has first been submitted to, and approved in writing by, the local planning authority.

Thereafter, the lighting units shall not be switched on or operated other than in strict accordance with the approved scheme.

The appeal on ground (a) and the deemed application

2. The appeal site comprises some 17ha of a low-lying estuarine landscape, which forms an extension to a large industrial area to the NW and NE of the site boundary. The site is enclosed by North Moss Lane to the SW and by South

Marsh Road to the SE, beyond which is open countryside. Planning permission was granted in June 2016 for '*Engineering works and use of land for external car parking, internal site access works, boundary works, and other associated works*' (Ref: DM/0147/16/FUL). Whilst this permission included the installation of 4 lighting columns, it was not implemented as approved and 13 lighting columns with associated lighting units, the subject of this notice, were erected instead.

3. The main issues in this case are the impact of the development on the living conditions of neighbouring residents and on the ecology and biodiversity of the adjoining Stallingborough Cress Marsh Strategic Habitat Mitigation Site (HMS).

Residential amenity

4. There are 2 residential properties close to the boundary of the site, Grasmere on North Moss Lane and Poplar Farm on South Marsh Road. Views of the appeal site from these properties are seen against an extensive industrial backdrop, including overhead power lines and their associated pylons. In this context, it is my view that, in the daytime, the lighting columns do not comprise an unacceptable visual intrusion and do not unduly conflict with policies in the North East Lincolnshire Local Plan 2013-2032 (NELLP) designed to protect the character of the area and the living conditions of residents.
5. Turning to the hours of darkness, the Council's assessment of the 2016 approved scheme noted that the nearest lighting column would be over 200m from the front elevation of Grasmere and that light spillage would result in a minimal amount of additional light, with no undue harm to the amenities of the occupants.
6. However, turning to the lighting scheme now installed, The Council's Environment Protection Team considers it to cause a significant adverse impact on neighbouring residential properties. The appellants' submitted lighting assessment appears to confirm this view and this appears consistent with my own observations of the appeal site and its surroundings in the hours of darkness. I conclude that, as currently installed, the lighting units unduly harm the living conditions of neighbouring residents, contrary to the aim of the development plan.

Ecology and biodiversity

7. I understand that the HMS to the South of the appeal site was set aside in mitigation of the expansion of the industrial area of which the appeal site now forms part. This land forms a buffer zone and is functionally linked to the internationally important Humber Estuary SSSI, SAC, SPA and Ramsar designations.
8. The appellants have provided an ecological review of the site surrounds, concluding that few of the species for which the above designations were made would be likely to be present on the adjoining mitigation land. This review concludes that there may be a small impact on bat species but that suitable modification to the lighting could mitigate this. The Council considers the light spill to reduce the effectiveness of the adjoining land to perform its intended function, particularly in respect of the accommodation of wintering birds. My own observation during my site visit was of a significant degree of light spill, quite clearly illuminating the adjoining land in question.

9. The Natural Environment and Rural Communities Act 2006 imposes a duty to have regard to the purpose of conserving biodiversity. Biodiversity 2020¹ points to the importance of retaining buffer land to ensure better protection for designated sites themselves and to establish coherent ecological networks. This theme is repeated in the National Planning Policy Framework and in the NELLP. In my view, there is no clear evidence that the lighting does not cause harm and therefore, given the policy background, it is prudent to avoid any potential adverse impact. In the absence of suitable mitigation, I conclude that the lighting units unduly diminish the ecology significance of the adjoining HMS.

Other matters

10. In addition to the undue impact on neighbouring residents in the hours of darkness, the lights are visible and obtrusive in the wider landscape, from more distant viewpoints, such as from the A1173 to the West. In my view, this is an unduly obtrusive feature of the night time landscape, contrary to the aim of NELLP Policy 42 to have regard to the wider landscape context.

The planning balance

11. The appeal site has the benefit of planning permission and the principle of its use as a car storage compound is not in dispute. Strategic Objective 3 of the NELLP points to the importance of infrastructure to support economic development. The Council accepts that lighting is necessary on this site for security purposes – and of course approved 4 lighting columns in 2016.
12. The key question is therefore whether a suitable planning condition can enable the development to be retained, where it would otherwise have been necessary to refuse planning permission. This would require the objections to the scheme as it stands to be overcome, whilst still enabling the site to be adequately lit for security purposes.
13. In considering this matter, I have borne in mind three factors. First, the lighting units can be operated individually, such that any units that can not be suitably mitigated can be switched off. Second, the light units can be replaced by ones of lesser intensity and/or with a different colour spectrum. Third, suitably designed shields can ensure that light spill beyond the site boundary does not reach a significant level. In this context, I am persuaded that there is a realistic prospect that the planning objections can be overcome by a condition requiring the submission, approval, implementation and retention of a lighting scheme. This appears to me to fulfil the relevant tests set out in the Planning Practice Guidance.
14. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted, subject to the condition set out above.

B S Rogers

INSPECTOR

¹ Biodiversity 2020: A Strategy For England's Wildlife and Ecosystem Services