



Appeal Decision

Site visit made on 16 July 2024

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2024

Appeal Ref: APP/A2525/W/24/3340576

**The Magnum Group, High Street, Donington, Spalding, Lincolnshire
PE11 4TA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by the Magnum Group against the decision of South Holland District Council.
 - The application Ref is H04-0973-22.
 - The development proposed is described as a "proposal of 11 dwellings comprising of 7 town houses and 4 detached dwellings."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the Framework, and I am satisfied that no party's interests would be prejudiced by my taking this approach.
3. In determining his appeal involving development within a Conservation Area, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. I have removed reference to the appeal scheme being a resubmission of a previous planning application from the description in the banner heading above, as this is not an act of development.

Main Issues

5. The main issues are:
 - whether the proposed development would be ancillary to the effective functioning of the Established Employment Site,
 - whether the proposed development would preserve or enhance the character or the appearance of the Donington Conservation Area, and
 - the effect of the proposed development on the living conditions of future occupiers, with particular regard to noise.

Reasons

Established Employment Site

6. The appeal site is primarily used for manufacturing, specifically metal fabrication, and comprises a mixture of light industrial units, workshops, an office and supplies counter and external hard standing areas.
7. As allocated by Policy 7 of the South East Lincolnshire Local Plan 2011-2036 Adopted March 2017 (LP), the appeal site lies within an Established Employment Site, identified under reference DO003. This allocation encompasses both the appeal site and the neighbouring site, occupied by George Barnsdale.
8. LP Policy 7 states that Established Employment Sites perform an important role in the local economy and will be protected for new B1, B2 or B8 development and/or redevelopment in Class B1, B2 or B8. This policy only supports non-B development where the applicant can show that it is ancillary to the effective functioning of the Established Employment Site.
9. The supporting text to this policy highlights that the LP is allocating employment land in order to, among other things, enable business growth. LP Policy 7 is broadly consistent with the aims of the Framework, which states significant weight should be placed on the need to support economic growth.
10. The appeal scheme seeks to erect eleven dwellings, which therefore comprises non-B development. While noting the appellant is engaged in a different business that generates local employment, the appeal proposal seeks to re-develop the whole of the appeal site. As such, while the appellant asserts that the existing business is no longer viable and is being wound down, the appeal scheme would not be ancillary to the effective functioning of the existing business operating within the appeal site.
11. Moreover, the appellant states that the proposed development would not prevent the continued operation of the neighbouring site and, as such, it would not result in the loss of the wider Established Employment Site. While this may be, the appeal scheme comprises a non-B development which would not be ancillary to the effective functioning of this neighbouring site.
12. For these reasons, the proposed non-B development would not be ancillary to the effective functioning of the Established Employment Site, contrary to LP Policy 7, as set out above.

Character and appearance

13. The appeal site is located on High Street, within the Donington Conservation Area (CA). High Street is the central commercial street within Donington, and one of the primary routes through the historic centre of the village. The CA is characterised by historic, vernacular buildings, laid out in a predominately tight knit linear pattern, with frontages enclosing the highway. Due to the layout of the built form, boundary enclosures are not prominent features within the CA. Where they are present, they largely comprise of walls, railings or hedges of relatively modest heights. The CA's significance, insofar as it relates to this appeal, is derived from the historic layout and materials of the built form and modest height boundary treatments.

14. While there is no disagreement between the parties in respect of the design or layout of the proposed dwellings, the appeal scheme seeks to erect an acoustic fence and utilise UPVC openings.
15. While the appellant asserts that the proposed fencing would have a better appearance than the side elevation of the buildings within the neighbouring George Barnsdale site, no elevational details of the fence have been provided. The Environmental Noise Assessment dated September 2023, report number SEM/J3614/18081-1 (the Noise Assessment) recommends that a 2.4 metre high acoustic fence, of an impervious material, is erected along the entire eastern, side boundary of the appeal site. Moreover, the appellant indicates it would be of timber construction.
16. The substantial height of the acoustic fence would be greater than most boundary features within the vicinity of the appeal site. While the proposed fence would only be partially visible from High Street, with the proposed dwellings, neighbouring buildings and proposed tree planting providing some screening, it would, nevertheless, be a conspicuous feature.
17. Consequently, due to its height and siting, the proposed acoustic fence would be an uncharacteristic and visually incongruous feature, in stark contrast to the existing boundary treatments within the locality. It would therefore be harmfully at odds with the prevailing character and appearance of the CA.
18. In respect of the proposed openings, the appellant has indicated that timber doors would be installed throughout the appeal scheme, with timber windows on the front elevation of the properties fronting High Street only.
19. While there would only be limited views of the proposed dwellings located to the rear of the appeal site, the whole of the appeal site lies within the CA. The absence of an Article 4 Direction is not, in itself, an indication that materials are not considered important. UPVC is not a traditional material. It typically results in thicker window frames, which give a modern and less refined appearance than those constructed from timber. Consequently, the use of UPVC windows within the appeal scheme would be harmfully at odds with the prevailing character and appearance of the CA.
20. My attention has been drawn to other, recent developments and other buildings within the CA that have UPVC windows. I do not however have the full planning background for each development identified. I cannot therefore be certain that the UPVC windows formed part of the original consented development, if they were installed with planning consent, or as permitted development. In any event, I am required to determine this appeal on its own merits, and the presence of similar windows on other properties does not justify the additional harm to the character and appearance of the CA that would arise from the use of UPVC openings.
21. Notwithstanding this, the appellant has submitted details of timber framed windows, for use within the whole of the appeal scheme. The precise details of the windows, along with timber doors, rainwater goods, facing brick and roof materials, could be dealt with by way of a suitably worded condition. While the Council have raised concerns in respect of the acoustic merits of the windows, I will deal with this element later in the decision.

22. While the appellant asserts that the buildings within the George Barnsdale site, with the exception of the frontage building, do not contribute towards the CA, the proposed acoustic fence would, nevertheless, harm the character and the appearance of the CA.
23. Consequently, while timber openings would preserve the character and the appearance of the CA, the proposed acoustic fence would not. Therefore, I conclude that the appeal scheme would fail to preserve or enhance the character or the appearance of the Donington CA as a whole and would result in harm to the significance of the designated heritage asset. As such, the appeal scheme is contrary to LP Policies 2, 3 and 29, which collectively require development proposals affecting heritage assets to, among other things, preserve and enhance or reinforce features that contribute positively to the area's character, appearance and setting. The development is also contrary to the Framework which seeks to ensure development conserves and enhances the historic environment.
24. As required by paragraph 205 of the Framework, great weight should be given to the conservation of a designated heritage asset, irrespective of the amount of harm identified. In this case, I consider that the harm to the significance of the heritage asset is less than substantial.
25. Paragraph 208 of the Framework states that if a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, then this harm should be weighed against the public benefits of the proposal. I turn to this in the overall heritage and planning balance later in the decision.

Living conditions

26. The appeal site lies adjacent to an existing business, George Barnsdale. The Framework requires planning decisions to ensure that new development can be integrated effectively with existing businesses and community facilities. Existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the applicant, or 'agent of change' should be required to provide suitable mitigation before the development has been completed.
27. While the Noise Assessment concludes that the dominant noise across the appeal site is from road traffic on High Street and other local roads, it also highlights that at times industrial noise will be dominant or significant. It specifically highlights that the operations of fixed plant at George Barnsdale may cause a significant adverse impact at the proposed residential locations.
28. To mitigate against the harm identified, the Noise Assessment outlines a number of measures, including the erection of an acoustic fence along the entire eastern boundary of the appeal site and the installation of double glazing within the proposed dwellings to minimum specifications.
29. However, while the Council's Environmental Protection section confirm the mitigation measures within the Noise Assessment are acceptable, in view of my findings in respect of the CA, the erection of an acoustic fence is not an appropriate solution for this visually sensitive location. In the absence of an appropriately designed, alternative solution, it is therefore likely that future

occupiers of the proposed development would experience unacceptable levels of noise from within the properties and the associated gardens.

30. In respect of the openings within the appeal scheme, while the appellant has indicated that there are acoustic wooden window options, the examples submitted have not been factored into the Noise Assessment. Therefore, there is no certainty that the details submitted would satisfactorily comply with the recommended mitigation specifications. Moreover, although the appellant has indicated they would be willing to use timber doors throughout the appeal scheme, no further details in this regard have been provided.
31. In the absence of substantive evidence to the contrary, I cannot condition the mitigation requirements in respect of the openings, as I cannot be certain that they could be achieved while also satisfying the design requirements to ensure the works do not adversely impact upon the CA. Consequently, I am not satisfied that the living conditions of future occupiers would not be adversely affected by the noise identified.
32. Moreover, given the findings of the Noise Assessment and in the absence of suitable mitigation measures, it is likely that the appeal scheme would lead to unreasonable restrictions being placed upon the neighbouring business.
33. Concerns have been raised in respect of the adequacy of the submitted Noise Assessment. Even if I were to consider it as a robust analysis, for the reasons outlined there is no adequate means of mitigation in respect of the noise concerns raised.
34. The appellant has highlighted that no permission has been given for the opening windows at George Barnsdale to over sail onto the appeal site and, as such, they can require that they are not opened. While this may be, the windows are currently openable, and some were open during my visit.
35. For the reasons stated, I conclude that the proposed development would result in unacceptable harm on the living conditions of future occupiers, with particular regard to noise. This is contrary to LP Policies 2 and 3 which seek, among other things, to ensure development proposals assess the impact upon neighbouring land uses by reason of noise and secure an acceptable level of residential amenity. The proposal is also contrary to the Framework which seeks to avoid unreasonable restrictions being placed upon existing businesses and ensure a high standard of amenity for future users.

Other Matters

36. I have had special regard to whether the settings of nearby listed buildings would be preserved, notably The Peacock Guest House, Red Cow Hotel and Mansfield House, 21 High Street. The location of the appeal scheme and the nature of the proposal relative to these designated heritage assets leads me to the view that their settings would be preserved.
37. The appellant has submitted a Viability Assessment with this appeal, which concludes that the provision of any affordable housing or infrastructure contributions would render the development unviable. As viability matters did not form a reason for refusal and given there are substantive reasons to dismiss this appeal, there is no requirement for me to consider this further.

Heritage and Planning Balance

38. The appeal scheme would deliver eleven dwellings that would contribute towards the local housing supply, thereby supporting the Government's objective of significantly boosting the supply of homes. The site is well located, within and adjacent to the defined town centre. It is therefore within walking distance of a range of services, facilities, a school and a public park, thereby providing alternatives to, and reducing the reliance on, private car travel. Furthermore, future occupiers are likely to support town centre shops and services. Having regard to the scale of the appeal scheme, these benefits attract modest weight.
39. The appellant has highlighted that the existing employment use includes commercial traffic, which they assert is in conflict with road and pavement users, particularly at school arrival and departure times. There is limited evidence to substantiate the alleged conflict and, as such, this carries limited weight.
40. In addition to the employment allocation, the appeal site also lies partially within and partially adjacent to the town centre, as defined in the LP. The appellant asserts that town centre uses are ostensibly made up of Class E uses and highlights that general industrial uses are excluded from Use Class E, with no permitted change from Use Class E to Use Class B2. Therefore, the appellant contends such uses are not considered appropriate in town centres. However, there is little substantive evidence to demonstrate that the existing use of the appeal site, or redevelopment of the site to Use Class B1, B2 or B8, is not appropriate or compatible with its location. This therefore carries limited weight.
41. The appellant also asserts that the appeal site should be read in the context of the town centre, highlighting that the Council have not identified any conflict with LP Policy 25. However, while noting the Framework supports residential development within town centres, an absence of harm in this regard is a neutral matter.
42. The appellant asserts that the office element of the appeal site benefits from permitted development rights and, as such, there is a route to residential development for the site through the prior approval process, regardless of how the LP is interpreted and applied. However, no further details have been submitted and a detailed comparison with the appeal scheme cannot be made. Additionally, there is little before me that the alternative scheme suggested is a greater than theoretical possibility or, that if the appeal is dismissed, the alternative would be pursued. Consequently, I find the suggested fallback position to have limited weight in the determination of the appeal.
43. Cumulatively, the wider public and planning benefits associated with eleven dwellings carry moderate weight in favour of the proposal. The Framework states that great weight should be given to the conservation of a designated heritage asset, irrespective of whether there would be less than substantial harm to significance. Consequently, the weight of public benefits in favour of the proposed development would not be sufficient to outweigh the harm to the significance of the designated heritage asset identified. The proposal therefore fails to accord with the historic environment protection policies of the Framework.

44. I have therefore found conflict with the statutory presumption under section 72(1) of the Act, which carries considerable importance and weight. I have also found that there would be conflict with the Council's development plan policies in relation to an Established Employment Site and the living conditions of future occupiers.

Conclusion

45. For the above reasons, I conclude that while timber openings would not result in harm to the character or the appearance of the CA, the harm identified in respect of the Established Employment Site, character and appearance of the CA, with regard to the proposed acoustic fence, and the living conditions of future occupiers, with regard to noise, is determinative. Therefore, the proposed development would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I should conclude other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR