

## Appeal Decision

Site visit made on 29/11/2024

by **J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC**

an Inspector appointed by the Secretary of State.

Decision date: 18 December 2024

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**Appeal Ref: APP/E2530/W/24/3348520**

**Land at Hards Lane, Frognall, Peterborough PE6 8RP**

- 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 T Hicks against the decision of South Kesteven District Council.
  - The application Reference is S23/2057.
  - The development proposed is described as 'Proposed change of use of existing agricultural hard surfaced land to open storage.'
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### Decision

1. The appeal is allowed and planning permission is granted for Proposed change of use of existing agricultural hard surfaced land to open storage; at Land at Hards Lane, Frognall, Peterborough PE6 8RP; in accordance with the terms of the application Ref: S23/2057, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three [3] years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
    - 'Location Plan,' Received by Council 8 November 2023;
    - 'Block Plan,' Received by Council 8 November 2023.
  - 3) The land shall not be occupied or brought into use until a schedule of maintenance of the boundary hedgerows be submitted to and approved in writing by the local planning authority, and the schedule shall be implemented as approved. The schedule shall include provision for replacement planting should the current boundary hedgerow fail.
  - 4) Notwithstanding the provisions of Schedule 2, Parts 3 and 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), the site shall only be used for the purposes specified in Paragraph 1 of this letter and for no other purpose, including any other purposes in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), unless planning permission for a new use of the premises has been granted by the Local Planning Authority.
  - 5) No materials shall be stacked or deposited on the site such that its height exceeds 3.5 metres above its base level measured from ground level.

## Preliminary Matters

2. I note that the Council and the Appellant in their appeal documents reference the paragraphs of the National Planning Policy Framework 2023 (the Framework). Since the submission of the appeal, the 2023 version of the Framework has been superseded by the 2024 version which was published on the 12 December 2024. The wording of the relevant paragraphs of the new Framework remain unchanged from the 2023 version (except for new paragraph numbers) and therefore did not require to be reassessed by either party in relation to this appeal. I have considered the appeal on this basis and refer only to the updated 2024 Framework within my decision.
3. I note discussion in the appeal documents with regards to whether the existing entrance gate has planning permission or represents lawful development. It is not for me under a Section 78 appeal to determine the current correct and legal development of the existing structures. I have therefore made my decision on this basis of the existing conditions and to the development plan and relevant material considerations. To that end it is open to the Council to pursue enforcement action, or for the appellant to apply for a determination under s191/192 of the Town and Country Planning Act if they believe the lawful development is different. My determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal.
4. I also note discussion with regards to the hardstanding of the site which consists of a compressed gravel. The Appellant has submitted an enforcement appeal letter<sup>1</sup> which states that the gravel was in place for a 4 year period (when legislation required a 4 year period to be exempt from enforcement action) and as such the development was exempt from enforcement action and considered lawful. I have considered this appeal on the same basis.

## Main Issue

5. Taking the above into account, the main issue of this appeal is having regard to national policy, the development plan and any material considerations, whether there is an essential need for the proposed development and if so whether justification for it exists, taking into account the character and appearance of the site and the surrounding locality.

## Reasons

6. Land at Hards Lane (the appeal site) is a small irregular shaped parcel of land of approximately 0.13Ha with access from Hards Lane. Hards Lane is located on the outskirts of the village confines of Market Deeping, where land is more transitional to a more semi-rural feel. Along Hards Lane are smaller industrial uses, such as to the south diagonally opposite the appeal site contains more informal business uses such as a holistic centre; a generator storage use where shipping containers are visible in the distance; whereas further along Hards Lane is a more formal Squirrel's Lodge Employment Park where large formal warehouse units are located. Land in between the industrial uses is very flat and has wide reaching

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<sup>1</sup> Appeal Ref: APP/E2530/C/09/2107564, Dated 26 February 2010

views into the countryside, whereas there is a large amount of vegetation also around employment uses.

7. The appeal site is undeveloped with no buildings on site, much of the perimeter of the land has planted mature conifer hedging with the land surfaced with gravel. Immediately adjoining the west of the appeal site is a dwelling with large setbacks from the appeal site, and to the immediate east is land that appears to be storing materials on the site. To me the surrounding site and locality contains a semi-rural character an appearance with instances of small and large scale industrial and business uses which support a rural economy.
8. In undertaking development in the countryside the South Kesteven Local Plan (LP) Policy SP5 seeks to limit development to that which has an essential need to be located outside of the existing built form of the settlement. The policy also lists a number of uses that it would support such as Agriculture, rural diversification, forestry amongst others. Additionally, LP Policy DE1 and Deepings Neighbourhood Plan (NP) Policy DNP9 are both design led policies that both seek to ensure that development is appropriate considering the local distinctiveness of the site and area, scale, character, appearance, impacts to living conditions, amongst others.
9. The Council have applied a strict reading of LP Policy SP5, in that if a use is not on the list of uses specified in the policy that it would support, then this would imply that the Council would not support this use in principle. However, upon reading the first sentence of the policy the wording is that *'development in the open countryside will be limited to that which has an essential need to be located outside of the existing built form of a settlement.'* To me, the policy read as a whole is merely suggesting the types of uses that it would support, rather than excluding or not supporting every type of use that it comes across that is not prescribed within the list noted in the policy. This more flexible interpretation of Policy SP5 would be supported by the Framework at Paragraphs 88 and 89 which seeks the sustainable growth and expansion of *'all types of business'* in rural areas and that planning policies and decisions should recognise that sites to meet local business needs in rural areas may have to be found adjacent or beyond existing settlements. I can also appreciate the broader aims of the policy which seek to control the development in rural areas and that there are LP policies E7 and E8, that whilst not mentioned in the Decision Notice, seek to strengthen the rural economy. I therefore disagree that the purpose of LP Policy SP5 is exclusionary by principle and requires flexibility to be in accordance with the wording of the Framework. I will therefore assess the scheme against the broad aims of LP Policy SP5 alongside Paragraphs 88 and 89 of the Framework.
10. The appeal site is quite small, contains a gravel surface and would not be commensurate with a type of agricultural or smallholding type use. The proposed open storage use is one where it would not be suitable within a residential environment, and having seen surrounding formal employment areas such as Squirrel's Lodge and Northfields, these employment sites have large purpose built warehouses which would far exceed the requirements comparable to this open air storage which only requires small parcels of secure open land. The Council have not included any details such as an Employment Land Study or employment allocations which illustrate that there are suitable alternative sites available for open air storage which would be suitable for the needs of the appellant, and hence I have considered this scheme on this basis. The Appellant has submitted a letter

from a small fencing company, and the Design and Access Statement is written by an employee of a commercial property surveying company where both highlight the needs of small businesses that are looking to grow, and that land is needed by small businesses to be able to store products, where this would cater for a small company that is not large enough to look for formal commercial premises as located in a formal employment site. These are additional relevant considerations that I will treat as material considerations to this scheme.

11. Taking this into account, there exists an essential need to cater for this type of business use which does not appear to be catered for currently within the surrounding employment sites. The proposal would assist the rural economy by facilitating expansion of an existing small business that is unable to be located to a surrounding employment site due to costs, site configuration or availability. As such the proposal would be made in accordance with the broad aims of LP Policy SP5 and Paragraphs 88 and 89 of the Framework, as described previously.
12. In considering the Development Plan as a whole, there are also LP Policy DE1 and NP Policy DNP9 which seek to assess the operation of the use and its impact upon the character and appearance of the area. The Council in their Officer Report state that an open storage use would not be unreasonable, the site is secured along Hards Lane, has a suitable access for what would be low frequency trips by a commercial vehicle. The Appellant's Statement of Case suggests that no storage of materials would exceed 3.5 metres, and that the tall hedging around the site would be maintained and subject to a management plan in order to assist in screening the development and would be happy with a planning condition of this effect. The proposed use would be a low intensity use, and would not cause adverse detriment to the living conditions of the neighbouring occupier in terms of noise, pollution, or access to light. The use would be of an appropriate scale and not be out of character considering the local distinctiveness of the area contains small and larger commercial uses which are found within this particular environment. The nature of uses using the appeal site would not require access via public transport or footpaths into the settlement, however this would be compliant with Paragraph 89 of the Framework in this instance, given the ability of the site to not cause adverse detriment to the character and appearance of the locality.
13. Taking the above into account, and in conclusion of this matter, the proposal would provide a small employment site that can cater for the needs of small business with a need for external storage and are looking to expand to a small premises. Consequently the proposal would meet the broad aims of LP Policies SP5 and DE1; NP Policy DNP9 and Paragraphs 88 and 89 of the Framework. As such, the scheme is consistent with the policies of the Development Plan, taking into account relevant material considerations.

### **Conclusion and conditions**

14. I conclude that the proposal is generally appropriate and would be compliant with the development plan on the basis of the reasons discussed and subject to the conditions listed at the beginning of this letter.
15. I have had regard to the context of the Framework and the National Planning Practice Guidance which advises that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted,

enforceable, precise and reasonable in all other respects. The Council has forwarded a list of proposed conditions should the appeal be allowed.

16. Conditions 1 and 2 are standard conditions setting the standard time limit condition for the commencement of works; and the approved plans in the interests of proper planning and the avoidance of doubt. These conditions meet the tests of conditions. Condition 3 seeks that a maintenance schedule is implemented to preserve the screening of boundary hedging around the site. The hedgerow assists in mitigating the harm to visual appearance of the site and aids security of the site. As such it is necessary to include the condition and that it is a pre-commencement condition prior to any use commencing. The Appellant has agreed to the pre-commencement condition within their Final comments. Condition 4 was suggested by the Council and seeks that permitted development rights are removed so that the use is unable to change within the B8 use class. This is considered necessary given that a change beyond the storage use to another B8 use may need to be considered in detail through a planning application. Condition 5 seeks that no storage will exceed 3.5 metres in height which was suggested by the Appellant, and is considered necessary and meets the tests of conditions to avoid any impacts to the character and appearance of the area.

*J Somers*

INSPECTOR