



Appeal Decision

Hearing held on 4 March 2025

Site visit made on 4 March 2025

by A Veevers BA(Hons) PGDip(BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2025

Appeal Ref: APP/R2520/W/24/3351663

Pennell And Sons Ltd, Newark Road, South Hykeham, Lincolnshire LN6 9NH

- 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 Mr Richard Pennell, Pennells Garden Centres, against the decision of North Kesteven District Council.
 - The application Ref is 24/0010/FUL.
 - The development proposed is erection of 8 modular buildings for Use Class E (a) uses – display or retail sale of goods.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development as stated on the application form reads 'Erection of 8no. modular buildings for Class E use'. The Council on its decision notice has described the development as the 'Erection of 8 modular buildings for Use Class E (a) and E (g) (i) uses - display or retail sale of goods/offices' and this description has been used by the appellant on the appeal form. However, during the processing of the planning application, the proposal was amended such that the proposed modular buildings would only be for retail use (Class E (a)). This matter was clarified by both main parties at the Hearing and an agreed amended description is set out in the banner heading above. I am satisfied that no party will be prejudiced by my use of it and I have proceeded to determine the appeal on this basis.
3. The appellant submitted an updated schedule of available commercial premises in the Lincoln Urban Area with the appeal. The Council and interested parties have had the opportunity to comment on this information as part of the appeal process. Therefore, I am satisfied there would be no prejudice to any party by me taking the updated information into account.
4. A new version of the National Planning Policy Framework (the Framework) was published in December 2024 and updated in February 2025. Accordingly for the purposes of this decision I have referred to the latest version of the Framework. The main parties have been given the opportunity to comment on the revised Framework. Therefore, I am satisfied that no one would be prejudiced by this change to the national policy context.

Main Issue

5. The main issue is whether the site is an appropriate location for the proposed development having regard to local and national planning policies, with particular regard to the sequential test for retail and other town centre uses.

Reasons

Site, proposal and policy background

6. The appeal site lies within the boundary of a large and well-established garden centre. It comprises of a parcel of land between the main garden centre building and Newark Road which includes part of the paved forecourt to the main building, a small grassed area, and an area of hardstanding that previously accommodated a display of hot tubs.
7. The garden centre is close to the edge of the built-up area of North Hykeham, approximately 7 miles from Lincoln city centre. Residential development is to the east and to the south, on the opposite side of Newark Road, lies commercial development that includes several car showrooms, a fast food outlet, a public house/restaurant, offices, warehouses and industrial units. To the immediate west of the garden centre, and sharing the same access off Newark Road, is a hotel and restaurant, beyond which, on the opposite side of the A46, is another hotel, a petrol filling station and fast food outlets. Relatively flat, open agricultural land lies beyond the commercial premises to the south, west and north.
8. Despite anomalies in both main party submissions in relation to floorspace, the Statement of Common Ground and the plans indicate the proposal would comprise of approximately 406 square metres (sqm) of retail floorspace made up of eight individual modular buildings. One building of 59sqm would be located on a grassed area close to the eastern boundary of the site. Four, 59sqm buildings would be located adjacent to the main access to/from the site, on the roughly square-shaped former hot tub display area fronting Newark Road. Three further buildings each of 37sqm would be located in a row on a paved area against the front elevation of the main garden centre building. Existing parking and circulation space would remain largely unaffected by the proposal. The buildings would comprise of flat roof painted timber units. Some units would be positioned close together in order to provide flexible space to interlock and create a larger unit which would be capable of responding to tenant requirements.
9. The proposed development relates to the provision of a main town centre use, and it is undisputed that the site is in an out of centre location. Policy S1 of the Central Lincolnshire Local Plan, adopted April 2023 (the Local Plan) sets out the spatial strategy and settlement hierarchy for the area. The aim of this overarching policy is to focus on delivering sustainable growth for the area that, amongst other aims, supports necessary improvements to facilities, services and infrastructure, assisted by the 'Central Lincolnshire Settlement Hierarchy'. The hierarchy indicates that the Lincoln Urban Area (LUA), together with the sites allocated in the Local Plan on the edge of the LUA will be the principal focus for development in Central Lincolnshire. The LUA is defined as the current built-up area of Lincoln and includes the appeal site.
10. Policy S35 of the Local Plan sets out a 4-tiered retail hierarchy for Central Lincolnshire. Lincoln City Centre is identified as the principal Tier 1 centre where

investment and other activity to improve the vitality and viability of the centre will be guided. The policy states that the focus for comparison shopping will be to the Primary Shopping Areas within the city centre and three other town centres, along with all the district and local centres. It goes on to state that proposals for town centre uses will be directed to the centres identified in this policy and will be appropriate in scale and nature to the size and function of the relevant centre and to the maintenance of the retail hierarchy as a whole. Within local and village centres in Tier 4 of the hierarchy, the scale of provision should be proportionate and strengthen their roles in providing mainly convenience shopping and local services to meet local needs. Importantly, the policy states development proposals for main town centre uses in out of centre locations will be required to demonstrate their suitability through a sequential site test in line with the Framework.

11. The Framework glossary, at Annex 2, includes retail development in its definition of main town centre uses. Paragraph 90 of the Framework identifies that planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
12. The sequential test for main town centre uses that are neither in an existing centre nor in accordance with an up-to-date plan is required by paragraph 91 of the Framework. Such uses should only be considered for out of centre sites if suitable town centre or edge of centre locations are not available (or expected to become available within a reasonable period). When edge of centre and out of centre proposals are being considered, preference should be given to accessible sites which are well connected to the town centre. Parties should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

Area of search

13. The appellant submitted a sequential assessment¹ with the planning application that was focused on a catchment area encompassing the built-up settlements to the south-west of Lincoln city centre, predominantly around North Hykeham. The appellant claims this would represent 35% of the centres across the LUA and would be proportionate having regard to the limited scale of the proposal, the intention for the units to be occupied by local businesses and the market they would serve. There is disagreement between the parties on the extent of the search area, which the Council assert should be focused on the whole LUA. In order to address the Council's reason for refusal in this regard, the appellant's updated assessment includes a wider sequential search area that incorporates the whole of the LUA and a 3 mile radius around the city² (updated SA).
14. The individual size of the units would be small, and the collective floorspace of the proposed units would be below the threshold required to undertake an impact test as set out in Policy S35 of the Local Plan. Nevertheless, even if the proposed retail units were occupied by local businesses, from the written evidence and what I heard at the Hearing in relation to prospective enquiries to the appellant, potential occupants of the units could include travel agents, electric bike retailer, flooring company and silversmith. It would be extremely unlikely that the market serving

¹ Planning and Retail Assessment, Williams Gallagher, December 2023

² Appendix 5 of Appeal Statement 'Schedule of Available Accommodation in Lincoln Urban Area', Profectus Town Planning, September 2024

such businesses would be derived solely from the local south-west LUA market. Indeed, the appellant identifies a key factor for occupants of the units, potentially being their first business premises, would be that the units would be close to a main road where the business would be as visible to as many people as possible. Therefore, in the absence of robust evidence to identify potential end occupants, the potential market that could be served by the proposal would be much wider than the south-west LUA catchment.

15. I accept that the units could be occupied by the type of business for which a local catchment would be appropriate. Nevertheless, on the basis of the evidence in this case, I cannot be certain that the type of business that could potentially occupy the proposed development would not serve a wide market, particularly if the business was 'niche' or of a kind not found elsewhere in the LUA. For these reasons, I consider the whole LUA would be the proportionate area of sequential search.

Suitability

16. The appellant's updated SA is limited to sites with an area of 3sqm to 579sqm. This is a range below the proposed individual unit size to just above the cumulative appeal site's area of 406sqm, any site much larger would be excessively large. This is therefore a reasonable assumption.
17. The updated SA identified limited alternative site availability in the south-west area of the LUA for the total floorspace proposed. Furthermore, whilst many available premises were found in the wider LUA, none of the sites were considered suitable. This was predominantly because they would not accommodate the cumulative size of the proposal or the majority of the parameters sought by the appellant, which were identified as being of importance to potential occupiers. That is, available sites should be able to provide directly adjacent free parking, nearby commercial businesses to drive foot-fall, nearby toilet and refreshment facilities for staff and customers and should be visibly prominent from a key arterial route.
18. In determining whether a site is suitable to accommodate the proposal, my attention has been drawn by the appellant to the Supreme Court judgement of *Tesco Stores Ltd vs Dundee City Council* [2012] UKSC 13 (the Tesco case), and the decision of the Secretary of State in appeal ref: APP/G2815/V/12/2190175 dated 11 June 2014 by LXB (Rushden) Limited against East Northamptonshire District Council. It is argued that these cases establish that the sequential test should be applied in the real world and should relate to the development proposed and the market intended to be served, not an alternative development that could be located in a town centre but which fundamentally changes the nature and character of the proposal.
19. While these cases establish that the word 'suitable' means whether an alternative site is suitable for the development as proposed by the applicant and not whether the development could be altered or reduced to fit that alternative site, this is not without qualification. Indeed, the Tesco case makes it clear that the appellant should 'have regard to the circumstances of the particular town centre when preparing their proposals, as regards the format, design and scale of the development. As part of such an approach, they are expected to consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing larger proposals in order that their scale may fit better with existing development in the town centre.' Moreover, while

the principles remain relevant, these examples relate to significantly larger developments of a different format to the appeal before me and are not therefore directly comparable.

20. It is important to note that Planning Policy Guidance (PPG) provides details of the considerations that should be taken into account in determining whether a proposal complies with the sequential test, including whether there is scope for flexibility in the format and/or scale of the proposal. It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
21. Suitability and availability are matters of planning judgement and as part of the sequential test should be judged on the basis of planning for land uses and against the backdrop of national policy, rather than solely from the retailer or developer's perspective. Sites should not be rejected on the strength of the self-imposed requirements or preferences of a single operator, otherwise the sequential approach would become divorced from the public interest.
22. In terms of flexibility, whilst I do not doubt the parameters set out by the appellant would be desirable for most businesses, no robust justification for these parameters has been provided and many of the identified features would be found where there are available premises in sequentially preferable locations.
23. Of the sites that were identified as sequentially preferable within the south-west of the LUA, from my site visit and information provided in the updated SA, I saw The Forum district centre and Rookery Lane/Newark Road local centre fulfilled the desired parameters. Most of the units in the city centre, whilst not located on key vehicular routes, would be in highly visible pedestrianised locations and whilst parking would be unlikely to be free, there would be many spaces available within easy walking distance.
24. In any event, due to the limited size of the proposed units, individually and even accounting for the requirement for a limited amount of mobility impaired parking, retail occupants would be unlikely to sell the quantities of bulky goods or any other goods that would necessitate a requirement for free parking to be provided immediately adjacent to the unit. Furthermore, the prerequisite for adjacent parking and to be visibly prominent from a key arterial route adds weight to my view that the proposal would serve a wider catchment than that envisaged by the appellant.
25. Turning to the format and scale of the proposal, there is no dispute between the parties that there are sites available within district and local centres as well as the city centre that would accommodate one or more units of the individual size proposed. However, the appellant argues these sites would not accommodate the proposed cumulative floorspace and that it would be unreasonable and contrary to advice in the PPG for the proposal to be disaggregated.
26. While both main parties agree that the nearby Sustainable Urban Extension allocated in the Local Plan would not be available to accommodate the proposed development within a reasonable timeframe, the sequential search confirms, even if vacancy rates are below the national average in the closest centres, there is sufficient floorspace available to accommodate the proposal. This is even disregarding the fact that full details of the commercial land search have not been

provided including the availability of other potential Class E sites, which have the potential to provide retail accommodation. I also recognise that, according to the appellant, many of the premises identified in the sequential assessment are no longer on the market. However, that does not mean there are no new premises available. To my mind, this demonstrates the relatively high turnover and of premises in the area.

27. I appreciate the existing garden centre draws significant footfall and that there are already retail concessions within the main building selling, amongst other things, clothes, gifts, bedding, books and games. Businesses occupying the proposed units, particularly start-up businesses, would benefit from this footfall and from being located adjacent to each other. The units would also provide opportunities to combine units to allow for the growth of businesses and provide flexibility.
28. Be that as it may, there is no compelling evidence before me that the proposed format or scale is functionally necessary or fundamental to the proposal. No specific retailer, direct link between each retailer, or information regarding the requirement for eight individual units divided into three separate areas has been identified. I can see no robust justification why the development cannot be accommodated in a different form or that sequentially preferable locations have not been thoroughly assessed on that footing.
29. It is recognised in the PPG that promoting new development in town centre locations can be more expensive and complicated than building elsewhere. Being modular units on land already serviced, the proposal would be reasonably quick to erect and to be ready for occupation. A range of sizes would be available and could be flexibly arranged. These factors would be beneficial for businesses seeking premises that required little work to fit their purpose or for trialling a new business.
30. Whilst I accept the above, the appellant's claim that larger available sequentially preferable sites would be difficult or expensive to sub-divide or other sites would be subject to lengthy lease terms with complex rent, dilapidation clauses, service charge and business rates has not been supported by any substantive evidence. Nor is there any evidence before me to demonstrate that future occupiers would benefit from lower initial rental costs than those in the locality, making the units more attractive to start-up businesses or that the proposal would support business viability, including that of Pennells Garden Centre.
31. The appellant's assertion that suitable and available sequentially preferable sites would already be occupied by the type of small businesses the appeal proposal aims to accommodate if they met their operational requirements is not supported by any objective evidence. Furthermore, I consider there is no particular market or locational requirement for the proposed development to be accommodated at the appeal site in relation to paragraph 12 of the PPG.
32. Overall, no convincing evidence has been provided to show that the appellant exercised any degree of flexibility in the sequential assessment. On this basis, the scope of the sequential assessment, would appear limited in order to adhere to the appellant's own business model, in my view, this does not accord with the expectations of the Framework.
33. The appellant suggested at the Hearing that the size and occupant of the proposed units could be restricted by a suitably worded planning condition in order

to ensure they would be available to start-up businesses. While this would facilitate the growth of small businesses, there is no such mechanism before me. In any event, on the basis of the evidence, I cannot be confident that there are not reasonably available alternative sites for such businesses in more sequentially preferable locations.

34. To conclude, based on the evidence before me and my findings above, I cannot be certain that there are no other potentially sequentially preferable sites that would be both suitable and available (or expected to become available within a reasonable period) for the broad type of development proposed. The proposal therefore has the potential to harm the vitality and viability of defined centres in the Local Plan where there are units within them that are currently vacant.
35. Consequently, I cannot be satisfied that the site is an appropriate location for the proposed development, having regard to local and national planning policies, with particular regard to the sequential test for retail and other town centre uses. The proposal therefore conflicts with Policy S35 of the Local Plan and paragraph 91 of the Framework, both of which require that main town centre uses in out of centre locations demonstrate their suitability through a sequential test. Furthermore, paragraph 95 of the Framework states that where an application fails to satisfy the sequential test it should be refused.

Other Matters

36. I acknowledge that one of the areas proposed for four modular units was previously used for the display of hot tubs that formed part of a previous planning permission on the site³. While this parcel of land therefore benefits from an established retail use associated with the wider garden centre, condition 7 of that permission states 'The new retail sales areas shall only be used for the display and retail sales of articles connected with the garden centre and associated and ancillary uses and for no other purpose falling within Class A1 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The proposal would not be for such 'articles' and thus, although a material consideration, it carries limited weight in favour of the scheme.
37. The proposed occupants of the retail units would not be directly associated with Pennells Garden Centre. However, there would be likely to be some financial benefit to the garden centre business in terms of linked trips and rental income. It would also benefit the local economy in providing additional retail space, shopping choice and employment opportunities, although jobs and spend would similarly arise if the proposed floorspace utilised vacant space in the defined centres. Nevertheless, the proposal would support economic growth and help to create the conditions in which businesses can invest, expand and adapt, as set out in paragraph 85 of the Framework. Bearing in mind the speculative nature of the retail units, I give this moderate weight in favour of the proposal rather than the significant weight suggested by the Framework because the economic benefits are not fully established.
38. I also give moderate positive weight to the fact the design and size of the units could be re-used elsewhere when no longer required. The proposal would also make use of land that the appellant claims is currently under-used. However, at the time of my site visit, albeit a snapshot in time, I observed the only area not in

³ LPA Ref 13/0901/FUL

active use or upon which items were located, is the former area used to display hot tubs. Due to the small size of this area, I attribute limited weight in favour of the proposal in relation to this matter.

39. The site would be accessible for residents in the local area and passers-by. However, proximity to nearby residential areas and regular bus services along Newark Road would ensure sites in the city centre and other local centres would be equally accessible. I therefore give little weight to this factor.
40. There is no certainty that the proposal would provide improved amenities for the local population given the speculative nature of the occupants, therefore this matter carries very little weight. Landscaping would be limited to a low hedge around a cluster of the proposed units and a small amount of tree planting, but I see no reason why the site could not be landscaped to the same effect without the proposed development.
41. Energy efficiency technologies would be incorporated into the design and materials of the proposed units. Such measures would contribute to climate change adaptation, but there is little to suggest the development would be particularly innovative or that it would go beyond the requirements of the development plan in this regard. Similarly, even if I were to agree that the appearance of the proposal would be acceptable, this is a neutral factor rather than one that carries positive weight in favour of the development.
42. The appellant refers to the Framework presumption in favour of sustainable development. However, the proposal would comprise main town centre uses in an out of centre location which, for the reasons given above, would not accord with the Local Plan. It would not therefore constitute sustainable development and paragraph 11 of the Framework is not engaged.

Planning Balance and Conclusion

43. The appeal site is not an appropriate location for the proposed development, with particular regard to the sequential test for retail and other town centre uses. I afford the resultant conflict with the development plan in this regard significant weight. There would be economic and social benefits associated with the proposal. Nevertheless, these benefits would not outweigh the harm that I have identified would occur as a result of the conflict with the development plan.
44. Consequently, the proposal conflicts with the development plan when read as a whole and there are no material considerations, including guidance in the Framework, that indicate that a determination should be made otherwise than in accordance with the development plan.
45. I therefore conclude that the appeal should be dismissed.

A Veevers

INSPECTOR