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## Appeal Decision

Site visit made on 20 August 2019

by **Matthew Woodward BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19<sup>th</sup> September 2019

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**Appeal Ref: APP/N2535/W/19/3230605**

**14 North Moor Road, Scotter, Gainsborough, DN21 3HT**

- 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 Maurice Brown against the decision of West Lindsey District Council.
  - The application Ref 138849, dated 3 January 2019, was refused by notice dated 1 March 2019.
  - The development proposed is change of use from an existing domestic garage to a small commercial garage for an existing business.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - the effect of the development on the living conditions of the occupiers of neighbouring properties having particular regard to noise and disturbance; and,
  - whether the proposed employment use would represent an appropriate use of the land.

### Reasons

3. Policy LP5 of the Central Lincolnshire Local Plan 2017 (the Local Plan) seeks to ensure that development for employment purposes takes place within designated employment sites unless it can be shown that no other suitable sites are available within existing allocations or within the built-up area of the existing settlement. Policy LP5 also seeks to ensure that developments related to employment do not have a significant adverse impact on the amenity of neighbouring occupiers. Policy LP26 of the Local Plan seeks to ensure that developments do not unduly harm the living conditions of existing and future occupants of neighbouring land as the result of issues including adverse noise.

### *Living Conditions*

4. The appeal site comprises a detached double garage which sits to the rear of, and is used for domestic purposes in connection with, 14 North Moor Road (No. 14). The garage is situated within a larger parcel of land which opens out to the rear of the appeal site and is occupied by a range of buildings

associated with a car repair business which is within the control of the appellant. Whilst I am told that the appeal building is used for domestic purposes, it has been built to commercial standards, and I saw on my site visit that it includes mechanically operated roller shutter doors, a vehicle lift, and a range of other fixtures and fittings.

5. The appeal site was the subject of a recent appeal decision, involving a similar proposal, which was dismissed by the Inspector partly on the basis that the proposed use of the appeal building for commercial vehicle repair purposes was considered to be incompatible with the residential use of the neighbouring land as it was found that it would lead to unacceptable levels of noise and disturbance<sup>1</sup>.
6. Unlike the buildings used in connection with the larger parcel of land to the rear, the appeal building, and the roller shutter doors within it, are located close to the dwelling and garden associated with No. 16, and within proximity of the rear gardens of a number of other properties situated along North Moor Road. Despite the presence of substantial vegetation in between the appeal site and neighbouring properties, any works to vehicles carried out either outside the garage, or within the garage with the doors open, would generate noise which could be audible from the rear gardens and elevations of the closest properties. Like the previous appeal Inspector, I find that this would be harmful to the living conditions of the occupiers of nearby properties.
7. The appellant intends to carry out vehicle repairs during daytime hours each week between Monday and Saturday, which would limit the extent to which neighbours would be subject to noise and disturbance associated with the proposed use. Furthermore, the appeal building is a solid structure and one which is capable of being fully enclosed by the roller shutter doors, which could be closed when works to vehicles were being undertaken. I am satisfied that both measures would ensure sufficient mitigation of noise and disturbance arising as a result of the proposed use.
8. However, the closure of the roller shutter doors to effectively contain noise would be reliant on an appropriate level of ventilation in order to ensure that airborne pollutants arising from vehicle repair activities were properly extracted, and there was sufficient breathable air for workers and visitors to the garage. Whilst I noted the presence of ventilation points within the appeal building on my site visit, it is unclear from the Environmental Health comments made on the planning application whether the installed ventilation system would be adequate. Furthermore, I have no details or specifications relating to the ventilation system upon which to assess its suitability. Therefore, I have no way of knowing if the ventilation system would be fit for purpose in connection with the proposed use, both in terms of ensuring sufficient ventilation of the garage and ensuring that any noisy activities within the garage remained adequately contained.
9. As a result of my foregoing observations, I am not satisfied that it would be reasonable or enforceable to impose a planning condition requiring the roller shutter doors to remain closed when works to vehicles were being undertaken given the uncertainty over the adequacy of the building's ventilation. Such a condition would fail to meet the six tests<sup>2</sup>.

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<sup>1</sup> Appeal reference – APP/N2535/W/18/3200690

<sup>2</sup> Planning Practice Guidance '6 tests' - 003 Reference ID: 21a-003-20190723

10. It is proposed to cease the vehicle repair activities on the land and within the associated buildings to the rear. The business would be moved to the appeal site. The size of the appeal garage means that the extent of vehicle repair activities would be reduced in comparison with those which could be undertaken on the existing, larger site. However, I have not been provided with a copy of a S106 obligation in order to ensure the cessation of the existing use. Without it, the proposal would allow the garage to operate on a commercial basis, in addition to the established vehicular repair use to the rear, and would lead to the intensification of vehicular repair uses within the area, thus potentially increasing noise and disturbance, to the detriment of the living conditions of nearby occupiers.
11. In conclusion, the development would have an unacceptable effect on the living conditions of the occupiers of neighbouring properties having particular regard to noise and disturbance. It would be in conflict with Policies LP5 and LP26 of the Local Plan which collectively seek to ensure that proposals do not lead to an unacceptable impact on neighbouring land uses, including through an increase in noise. The development would fail to create a place with a high standard of amenity for future users, contrary to the requirements set out in paragraph 127 of the National Planning Policy Framework.

#### *Land Use*

12. I understand that activities associated with the proposal would be limited in frequency. Furthermore, the appeal building and land immediately surrounding it is much smaller than the land and buildings associated with the established vehicle repair business to the rear. It was clear on my site visit that these buildings were not being utilised to their full potential and therefore, there remains the prospect that commercial activities on the land could intensify, or the use proposed within the appeal building could simply remain on this land. Given that the site access would be unaltered, I am satisfied that the relocation of a less intensive use to the appeal building would, in principle, represent a suitable alternative site in an existing built up area.
13. Nevertheless, as I have already explained, I have no certainty that the use of the land to the rear of the appeal building would cease as it has not been secured through the submission of an acceptable S106 obligation. Consequently, the proposal would result in an additional employment use on a non-allocated site and it has not been demonstrated to my satisfaction that there are no other allocated sites available, nor any other suitable sites within the built-up area of Scotter.
14. For the foregoing reasons, the proposed employment use would not represent an appropriate use of the land. It has not been demonstrated that there are no other suitable or alternative sites within allocated sites or within the built-up area, contrary to the requirements of Policy L5 of the Local Plan.

#### **Other Matters**

15. Whilst the garage could be used to repair and work on vehicles as a hobby in connection with the existing residential use, this would not be likely to be on the same scale as commercial vehicle repairs. Therefore, as I find that the proposal would be harmful to the living conditions of nearby occupiers, this consideration does not outweigh the harm I have identified.

16. I am aware of the appellant's intention to use the garage for a limited period throughout the year. However, I have not been provided with specific dates or details upon which an appropriate planning condition could be framed. Furthermore, I have not been made aware of any complaints arising from the existing business activities. However, these considerations do not outweigh the harm I have identified, as I find that the commercial use of the garage would be harmful for the reasons given.
17. The lack of objection to the appeal scheme relating to highways, flood risk and a range of other matters are neutral factors which do not weigh in favour of the proposal.

**Conclusion**

18. I therefore conclude that, for the reasons given, the appeal is dismissed.

*Matthew Woodward*

INSPECTOR