

Appeal Decision

Site visit made on 19 November 2019

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2019

Appeal Ref: APP/N2535/W/19/3235657

Red Hog Pastures, Main Street, Apley, Market Rasen LN8 5JQ

- 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 Andrew Judge against the decision of West Lindsey District Council.
 - The application Ref 139344, dated 18 April 2019, was refused by notice dated 30 May 2019.
 - The development proposed is to erect 2no. general purpose agricultural buildings and 2no. silos.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues of this appeal are:
 - the effect of the proposed development on the minerals safeguarding area;
 - whether a functional agricultural need for the proposed development has been demonstrated;
 - the effect of the proposed development on the character and appearance of the appeal site and surrounding area; and,
 - the effect of the proposed development on matters of contamination and drainage.

Reasons

Minerals Safeguarding Area

3. The appeal site lies within a sand and gravel minerals safeguarding area. Policy M11 of the Lincolnshire Minerals and Waste Local Plan Core Strategy and Development Management Policies 2016 (MWLP) requires proposals for developments in the Mineral Safeguarding Areas to be accompanied by a minerals assessment. The Policy also seeks to ensure that mineral resources of current or future economic importance are protected from permanent sterilisation by other development.
4. MWLP Policy M11 provides for planning permission to be granted where development would not sterilise mineral resources or prevent future minerals extraction on neighbouring land, or where a developer can demonstrate that

prior extraction of the mineral would be impracticable, and that the development could not reasonably be sited elsewhere. There is no minerals assessment accompanying the application and I note that the proposed development does not meet any of the exceptions listed in MWLP Policy M11.

5. For the reasons given above, I cannot be certain that the proposed development would not significantly harm the minerals safeguarding area. Therefore, the proposed development fails to comply with MWLP Policy M11 and the National Planning Policy Framework (the Framework).

Whether needed for agriculture

6. The Council argues that the appellant has not demonstrated an agricultural need for the buildings and structures, and so it is not justified under Policies LP2 and LP55 of the Central Lincolnshire Local Plan (LP). The application form and appeal form indicate that the area of the site extends to approximately 0.7ha and is located in the open countryside.
7. I note that the appellant asserts that the site cannot be used for 'cropping' due to its size but is suited to the storage of straw and other agricultural materials for use elsewhere, and not taking up valuable arable land. However, LP Policy LP2 requires a demonstration essential to the effective operation of agriculture, horticulture, forestry, outdoor recreation, transport or utility services, and LP Policy LP55 requires the rural location of the enterprise is justifiable to maintain or enhance the rural economy, amongst other things.
8. The Framework is a material consideration in the determination of this appeal. Paragraph 83 of the Framework states that planning policies and decisions should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings; and the development and diversification of agricultural and other land-based rural businesses.
9. However, there is little firm evidence concerning how the proposed development would operate in the wider agricultural community or where the straw and other agricultural materials that are intended to be stored in the building would be obtained. Given the limited size of the site and the lack of specific detail surrounding the items that would be stored in the proposed building, I cannot be certain that the scale of the proposed development is reasonably necessary for the purposes of agriculture.
10. For the reasons given above, I conclude on the available evidence that I am not persuaded that a functional agricultural need for the proposed development has been demonstrated. The proposed development would therefore fail to comply with the operational requirements of agriculture and rural enterprise aims of LP Policies LP2, LP55 and the Framework.

Character an appearance

11. Surrounding the site are other fields. I acknowledge that the site is enclosed by post and wire fencing, with hedgerows. Additionally, I note that earth bunds partially serve the site, mainly on the front boundary with the road. On the evidence before me, including my findings during my visit the proposed development would still be visible from the adjoining fields and wider countryside, especially from views towards the rear boundary of the site, where the proposed buildings would be closely sited, in particular Building No1.

12. I accept that the proposed development would have the typical appearance of agricultural buildings and structures that would not be uncommon on a farm holding. Moreover, the materials proposed for construction in this instance would be agricultural in appearance. However, the countryside, such as that surrounding the appeal site, generally has an open and spacious character. Paragraph 170 of the Framework states that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
13. The scale of the proposed buildings would be a noticeable feature in the landscape. Given my findings on the previous issue, I cannot be certain that the proposed development is of an acceptable scale. Thus, as the scheme would be notable in size, especially when compared to the size of the holding, it would be very noticeable in the landscape due to its relatively exposed location.
14. For the reasons given above, I conclude that the proposed development would cause significant harm to the character and appearance of the appeal site and the surrounding countryside. The proposed development would therefore fail to comply with the character and appearance aims of LP Policy LP17 and the Framework.

Contamination and drainage

15. There is no dispute between the main parties that the site historically was once used for the exploration of oil¹. From the evidence before me, operations ceased in October 1986 and restoration of the site was completed in accordance with details agreed on 21 October 1986. I note in the appellant's submission, correspondence² with the Oil and Gas Authority (OGA) confirming an agreement to the revision to the restoration of the site, to permit the retention of hard standing and the surrounding bund. Additionally, I note that the OGA consider the site was restored as required by the planning permission, albeit without prejudice.
16. The comments received from the Lead Local Flood Authority (LLFA), which amongst other things is responsible for the management of surface water flood risk, were also consulted on the proposed development and did not object to it. On the details before me, no substantive evidence has been provided that causes me to question the consultation response of the LLFA or demonstrates that contamination still exists at the site, contrary to the beliefs of the OAG. I find these factors to be a material consideration of significant weight in the determination of this appeal.
17. In the particular circumstances surrounding the proposed development, with particular regard to the planning history of the site, I find that in the absence of substantive evidence to the contrary, the issues of contamination and drainage, in this instance, could be addressed through the imposition of suitably worded conditions. Such conditions would be able to ensure that preventative measures would be in place regarding potential sources of contamination and the implementation of a Sustainable Urban Drainage Scheme as proposed. This would ensure that future occupiers of the site and neighbouring land would be protected. In this instance, I am satisfied that

¹ W/2/277/85 dated 3 April 1985 approved 6 Nov 1985

² Email dated 2 November 2019

otherwise unacceptable development could be made acceptable through the use of conditions³.

18. For the reasons given above, I conclude that the proposed development would not cause significant harm with regard to contamination and drainage. The proposed development would therefore comply with the contamination and drainage aims of LP Policies LP14, LP16 and the Framework.

Other Matters

19. I note the appellant's comments about the way the Council handled the application. However, this matter is not material to the assessment of the appeal before me. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

Planning Balance and Conclusion

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.
21. I have found that the proposal does not create any significant harmful effects from a contamination and drainage point of view. Additionally, I note that no objection has been received from the Local Highway Authority. However, these are neutral matters in the overall planning balance. Whilst the proposal would lead to some social and economic benefits, these would be relatively limited in extent, and would not significantly and demonstrably outweigh the clear and substantial harm that would be caused to the minerals safeguarding area and the character and appearance of the appeal site and the surrounding area.
22. The proposal would therefore fail to comply with the development plan when taken as a whole, and there are no other considerations which outweigh this finding. It would also fail to accord with the requirements of the Framework.
23. Taking all matters into consideration, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

³ Paragraph 54 of the Framework