

Officers Report

Planning Application No: 144830

PROPOSAL: Planning application seeking removal of condition 21 of planning permission 139273 granted 31 May 2019 re: storage of materials, goods, waste or any other articles (relating to development of 17no. rural enterprise units, consisting mainly of business use along with a retail unit, cafe and office. Demolition of existing buildings).

LOCATION: Hillcrest Grimsby Road Caistor Market Rasen LN7 6JG

WARD: Caistor and Yarborough

WARD MEMBER(S): Cllr O Bierley & Cllr A T Lawrence

APPLICANT NAME: Mr Oliver Lawrence

TARGET DECISION DATE: 12/08/2022

DEVELOPMENT TYPE: Minor - Manufacture/Storage/Warehouse

CASE OFFICER: Richard Green

RECOMMENDED DECISION: Refuse.

This application has been referred to the Planning Committee, as the applicant is from the immediate family of a Councillor (Councillor Mrs A T Lawrence).

Description:

The site is located outside of the built footprint of Caistor (in the parish of Cabourne) to the south of the A46 and to the east of the B1225 (to the east of the cross roads of the A46 and the A1173/B1225). The site is approximately 870 metres in walking distance from the centre of Caistor (The Market Place). The site has planning permission (135031) and has been redeveloped for 17 rural enterprise units, a retail unit, café and office following the demolition of the existing buildings and a subsequent permission 139273 allowed for a D2 Assembly and Leisure use (now use class E) on the site.

The nearest residential dwelling (Hillcrest House) is located approximately 19 metres to the south of the site at its closest point and there is a Grade II Listed Dwelling (Top House, Farm) located approximately 161 metres to the north west of the site. The site is within the Lincolnshire Wolds Area of Outstanding Beauty.

The previous planning permission (139273) was granted on the 31/05/2019, subject to conditions with the following description:

'Planning application to vary condition 24 of planning permission 135031 granted 14 December 2016-allow local business to use the site (D2 Use)-resubmission of 138836.'

Condition 21 of planning permission 139273 currently states

'21. There shall be no storage of materials, goods, waste or any other articles on the site otherwise than inside the buildings without the prior written approval of the Local Planning Authority.

Reason: *In the interest of residential and/or visual amenity in accordance with policies LP17 and LP26 of the Central Lincolnshire Local Plan.'*

This application seeks to remove condition 21 of planning permission 139273. The accompanying letter states "it is considered that the condition is not required and is overly restrictive, hampering the running of businesses within the site".

It may be noted that application had originally sought to amend the condition on the original 2016 permission. However, as the applicant subsequently "amended" that permission in 2019 by varying conditions and implemented it, it has been agreed with the applicant that the condition on the 2019 permission is now the applicable condition.

Town and Country Planning (Environmental Impact Assessment) Regulations 2017:

The development is within a 'sensitive area' as defined in Regulation 2(1) of the Regulations (the Lincolnshire Wolds Area of Outstanding Natural Beauty) and has therefore been assessed in the context of Schedule 2 of the Regulations. After taking account of the criteria in Schedule 3 it has been concluded that the development is not likely to have significant effects on the environment by virtue of its nature, size or location. Therefore the development is not 'EIA development'.

Relevant history:

139273 - Planning application to vary condition 24 of planning permission 135031 granted 14 December 2016-allow local business to use the site (D2 Use)-resubmission of 138836. Granted 31/05/2019.

138836 - Planning application to vary condition 24 of planning permission 135031 granted 14 December 2016-allow local business to use the site (D2 Use). Refused 07/03/2019.

136232 - Request for confirmation of compliance with conditions 2,3,4,5,6,7,9 and 10 of planning permission 135031 granted 14 December 2016. Conditions partially discharged 30/10/2018.

135031 - Planning application for proposed 17no. rural enterprise units, consisting mainly of business use along with a retail unit, cafe and office. Demolition of existing buildings. Granted 14/12/2016.

135007 – Planning permission for change of use from A1 Retail to D2 Gymnasium. Refused 16/12/2016.

128839 - Retrospective planning application for the change of use from Workshop to A1 Retail. Granted 10/9/2012.

Representations:

Chairman/Ward member(s): No representations received to date.

Caistor Town Council: No objection/comments.

Cabourne Parish Meeting: No representations received to date.

Local residents: Hillcrest, Caistor Top, Caistor (x2) – Firstly, I would like to state that ever since the application was granted to build an industrial estate next to my property we have endured constant noise disturbance and harassment from the owners of the land and tenants.

I note the conditions set out in planning permission 135031 including condition 7,11,21 and can confirm categorically that these conditions are continually being breached by the owners and the users of the adjoining industrial estate, The dust mess and noise from people working outside of the buildings is a continual harassment.

There is a considerable amount of storage outside of the buildings including packaging materials cardboard and a shipping container which is used for extra storage, some of these items represent a fire hazard. We have effectively lost the use of half our garden.

The neighbours are in continual breach of the planning conditions and I have complained to the local authority on a number of occasions. It seems to me that the relaxing a further planning condition about the materials outside of the buildings will only serve to increase both the noise and nuisance

Due to the amount of waste currently stored on the industrial estate; in breach of planning conditions; we are already experiencing problems with rats and it is becoming completely unacceptable.

Considering there is already a clear condition on the planning permission not to store these materials outside of the buildings, and which is already causing us nuisance, I think that the removal of the storage conditions would only make matters worse. It will put us in a situation where the council will have no control over the use of the industrial estate and the owners will basically be able to get away with whatever it is they wish to do regardless of our rights.

There will also be considerable increase in the amount of outside activity on the site if they are allowed to store materials rather than inside buildings. IT is clear that these planning conditions, including condition 23 are necessary for the reasons already stated in the planning permission.

The condition is quite clear and straight forward and is without doubt; and considering the problems we have already encountered; very reasonable in the circumstance.

I therefore request that rather than granting the planning permission, it is turned down and further that the local planning enforcement department should insist on the observance of the other conditions within the existing permission in order to bring some level of peace to myself and my wife. I therefore ask that this application is refused.

Red Roofs, Horncastle Road, Caistor – Condition 23 [135031] has already been flagrantly ignored and broken. Furthermore the storage unit and piles of cardboard are a vermin hazard and can readily be seen from the B1225. Screening was a prerequisite for the original planning permission being granted. The trees have been chopped down to make way for an ugly fence and have not been replaced.

The development is on the edge of an area of outstanding natural beauty, not an industrial zone and the storage tank and piles of cardboard are a detriment to the AONB. Additionally a delivery lorry for the site destroyed the grass verge in front of the residential home of Red Roofs trying to turn round to reach the site

Occupiers: 10-12 Hillcrest Park, Caistor: Supports the application for the following reasons:

- I have been a tenant from the outset [2.5 years] and have never experienced any noxious, pungent, hazardous, food waste, environmental, or health issues from the tenants therein nor do I see any evidence this would change as a consequence of permitting the commercial properties to operate as per this application.
- We have brought employment and prosperity to Caistor. In line with West Lindsey's vision, I currently employ 9 local people
- Our waste is particularly recyclable being either once used cardboard or new wooden crates.
- To be able to continue our successful business at Hillcrest we do need to be able to hold transient recyclable waste for short periods (we have fortnightly collections of cardboard bales) and monthly for the wooden crates which we collapse into a tidy stack ready for despatch.
- We want to support West Lindsey's objectives with recycling and we are also actively looking to become carbon neutral. We receive our components in new wooden crates which are placed in our unit within the day of delivery until the day we unpack ready for assembly onsite (when we collapse the crate ready for recycling together with the cardboard from the components).
- We, like all other tenants have no food, hazardous, or noxious waste.
- I respectfully ask that West Lindsey Council support this application to allow tenants to operate in a way that is conducive to any commercial site of this nature particularly in relation to inert materials for recycling

and the environmental benefits of being able to hold things on site and operate in an environmentally friendly way.

Lincolnshire Wolds AONB Officer: No representations received to date.

LCC Highways and Lead Local Flood Authority: Condition does not relate to Highway Authority.

Growth and Regeneration: No comments to make.

Environmental Protection: I am satisfied that materials and goods can be stored outside on the site as long as they do not give rise to dust, odour or pests.

Archaeology: No representations received to date.

Health and Safety Executive: HSE does not advise, on safety grounds, against the granting of planning permission in this case.

There is at least one unidentified pipeline in this Local Authority Area. You may wish to check with the pipeline. The details HSE have on record for these pipelines is as follows:

- 4140921_ EDF Energy Ltd Grayingham Offtake to West Burton B Power Station.
- 4455752_ Cadent Gas Ltd Hemswell Cliff Biomethane Pipeline

National Grid Plant Protection: No representations received to date.

Conservation Officer: No representations received to date.

Relevant Planning Policies:

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Here, the Development Plan comprises the provisions of the Central Lincolnshire Local Plan (Adopted April 2017) and the Caistor Neighbourhood Plan (Adopted March 2016).

Development Plan:

The following policies are particularly relevant:

Central Lincolnshire Local Plan 2012-2036

LP1: A Presumption in Favour of Sustainable Development

LP2: The Spatial Strategy and Settlement Hierarchy

LP5: Delivering Prosperity and Jobs

LP6: Retail and Town Centres in Central Lincolnshire

LP13: Accessibility and Transport

LP14: Managing Water Resources and Flood Risk

LP16: Development on Land Affected by Contamination

LP17: Landscape, Townscape and Views
LP26: Design and Amenity
LP55: Development in the Countryside

**With consideration to paragraph 219 of the National Planning Policy Framework (July 2021) the above policies are consistent with the NPPF (July 2021). LP1 is consistent with NPPF paragraph 11 as they both apply a presumption in favour of sustainable development. LP2 is consistent with NPPF chapter 2 as they both seek to deliver sustainable growth. LP5 is consistent with chapter 6 of the NPPF as they both seek to create a strong and sustainable economic growth. LP6 is consistent with chapter 7 of the NPPF as they both seek to ensure the vitality of town centres. LP13 is consistent with NPPF paragraphs 110-113 as they both seek to ensure an efficient and safe transport network that offers a range of transport choices. LP14 is consistent with paragraphs 159 to 169 of the NPPF as they both seek to avoid putting inappropriate development in areas at risk of flooding. LP16 is consistent with NPPF paragraphs 183 as they both seek to ascertain if the ground conditions of a particular site are suitable for the proposed use. LP17 is consistent with NPPF paragraph 130 & 174 as they seek to protect valued landscapes and recognise the intrinsic character and beauty of the countryside and are sympathetic to the built environment. LP25 is consistent with chapter 16 of the NPPF as they both seek to conserve and enhance the historic environment. LP26 is consistent with section 12 of the NPPF in requiring well designed places and LP55 is consistent with paragraph 80 and paragraph 174 of the NPPF as they both seek to avoid isolated new homes in the countryside and both recognise the intrinsic character and beauty of the countryside. The above policies are therefore attributed full weight.*

<https://www.n-kesteven.gov.uk/central-lincolnshire/local-plan/>

Draft Central Lincolnshire Local Plan:

Review of the Central Lincolnshire Local Plan commenced in 2019. The 1st Consultation Draft ("Reg 18") of the Local Plan was published in June 2021, and was subject to public consultation. Following a review of the public response, the Proposed Submission Draft ("Reg 19") of the Local Plan was published in March 2022, and was subject to a further round of consultation. On 8th July 2022, the Local Plan Review was submitted to the Planning Inspectorate in order for it to commence its examination.

The NPPF states:

"48. Local planning authorities may give weight to relevant policies in emerging plans according to:

- (a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- (b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- (c) The degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given) 24."

The Draft Plan may be a material consideration, where its policies are relevant. Applying paragraph 48 of the NPPF (above the decision maker may give some weight to relevant policies within the submitted "Reg 19" Plan, with the weight to be given subject to the extent to which there may still be

unresolved objections to those policies (the less significant the unresolved objections, the greater the weight that may be given).

<https://www.n-kesteven.gov.uk/central-lincolnshire/local-plan/>

Caistor Neighbourhood Plan:

Policy 1 – Growth and the presumption in favour of sustainable development
Policy 2 – Type, scale and location of development
Policy 3 – Design Quality
Policy 7 – Community Facilities
Policy 8 – Leisure Facilities

<https://www.west-lindsey.gov.uk/planning-building-control/planning/neighbourhood-planning/all-neighbourhood-plans-west-lindsey/caistor-neighbourhood-plan-made>

National policy & guidance (Material Consideration)

- **National Planning Policy Framework (NPPF)**

The NPPF sets out the Government’s planning policies for England and how these should be applied. It is a material consideration in planning decisions. The most recent iteration of the NPPF was published in July 2021. Paragraph 219 states:

"Existing [development plan] policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- **National Planning Practice Guidance**
<https://www.gov.uk/government/collections/planning-practice-guidance>
- **National Design Guide (2019)**
<https://www.gov.uk/government/publications/national-design-guide>
- **National Design Code (2021)**
<https://www.gov.uk/government/publications/national-model-design-code>

Listed Building Legal Duty

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

<https://www.legislation.gov.uk/ukpga/1990/9/section/66>

Other- AONB

S85 (1) of the Countryside and Rights of Way Act 2000;

“S85(1) - In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.”

<https://www.legislation.gov.uk/ukpga/2000/37/section/85>

Lincolnshire Wolds AONB Management Plan 2018-2023

The five key aims of the Management Plan are to sustain and enhance:

1. the Lincolnshire Wolds' natural beauty and its landscape character
2. farming and land management in the Wolds as the primary activities in maintaining its character, landscape and biodiversity
3. recreational, tourism and interpretive activities and opportunities appropriate to the area
4. the economic and social base of the Wolds including the development and diversification of enterprises appropriate to the area
5. partnerships between organisations, the local community, landowners and others with an interest in the Wolds.

<https://www.lincswolds.org.uk/our-work/management-plan>

Main issues

- Implications of removing condition 21 of planning permission 139273.
- Other Matters

Assessment:

The application seeks the removal of Condition 21 of planning permission 139273. This condition stated that *‘there shall be no storage of materials, goods, waste or any other articles on the site otherwise than inside the buildings without the prior written approval of the Local Planning Authority.* The condition was imposed in the interest of residential and visual amenity. When considering an application for amendments or removal of an original planning condition, planning law requires the local planning authority to consider only the question of the conditions subject to which planning permission should be granted.

As such the planning authority can only consider the implications of removing the condition, in this case the removal of a condition restricting storage of materials to inside buildings on the site. The principle of the overall development and other planning considerations cannot be revisited as part of this application.

The reason for the imposition of the condition was given as: ‘In the interest of residential and/or visual amenity in accordance with policies LP17 and LP26 of the Central Lincolnshire Local Plan.’

The nearest residential dwelling (Hillcrest House) is located approximately 19 metres to the south of the site with the garden of this dwelling running the full length of the southern boundary of the site subject of this application.

Local Plan Policy LP26 states that planning permission will be granted for new development provided the proposal will not adversely affect the residential amenity of neighbouring properties by virtue of overlooking, overshadowing, loss of light, over dominance, noise and odour. The policy also applies to future occupants of development proposals under consideration.

It is considered that removing this condition would allow the unrestricted outside storage of materials, goods and waste across the site and would have the potential to adversely impact the residential amenity of this neighbouring dwelling as outside storage is not an adequate solution to the storage of commercial waste on this site as it is not compatible with the neighbouring residential use and would be likely to have an adverse impact on residential amenity through odour and dust. It can be noted that third parties, including the adjacent neighbour, have cited that the site has been operating in breach of the condition – and that they have been suffering with nuisance as a consequence.

In their application, the applicant refers to the original grant of planning permission (135031) and states:

“The storage of waste was agreed via the discharge of conditions process. The site previously had a commercial use which did not prohibit the storage of goods/materials. It should also be noted that the Environmental Protection Officer made no reference to issues resulting to outdoor storage. It is submitted that the external storage of good and materials will not have any detrimental impact on the amenity of the neighbouring dwelling given the existing landscaping and boundary separation between the properties. The storage of materials/goods by their very nature do not cause any more noise or nuisance issues than the movement of vehicles.”

Seeking that the matter wasn't properly considered at the time the original permission was granted, is not convincing – the condition was applied and its reason clearly stated *“Reason: In the interest of residential and/or visual amenity in accordance with West Lindsey Local Plan First Review Policy STRAT1.”*

Furthermore, two of the most immediate neighbours object to the proposed removal of the condition, setting out that breaches of the condition are causing nuisance, and seeking effective enforcement of the condition. The applicant's claim that external storage *“will not have any detrimental impact on the amenity of the neighbouring dwelling given the existing landscaping and boundary separation between the properties”* is not therefore overly convincing.

The applicant has not put forward any alternative proposed mitigation scheme or provision that could otherwise be taken into account – they seek the condition be removed in its entirety, allowing site operators to store external materials without any form of restriction.

It is considered that the condition was originally applied in the interests of residential amenity – the application has not demonstrated that the condition is no longer necessary in this regard.

The site also lies within the Lincolnshire Wolds AONB. Section 85(1) of the Countryside and Rights of Way Act 2000 requires that the local authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty. Policy LP17 seeks to protect and enhance the intrinsic value of our landscape and townscape. The considerations of Policy LP17 are particularly important when determining proposals which have the potential to impact upon the Lincolnshire Wolds AONB. The Lincolnshire Wolds has a strong unity of visual character, characterised by open plateau hilltops, sweeping views, strong escarpments, wide grass verges and ridge-top route ways, dramatic wooded slopes and valleys, beech clumps, attractive villages often nestled in hill folds, and natural and historic features of great interest.

To accord with the provisions of Policy LP17 development proposals should have particular regard to maintaining and responding positively to any natural and man-made features within the landscape and townscape which positively contribute to the character of the area, such as (but not limited to) historic buildings and monuments, other landmark buildings, topography, trees and woodland, hedgerows, walls, water features, field patterns and intervisibility between rural historic settlements.

LP17 also states that “The considerations set out in this policy are particularly important when determining proposals which have the potential to impact upon the Lincolnshire Wolds AONB and the Areas of Great Landscape Value (as identified on the policies map) and upon Lincoln's historic skyline”.

Policy LP26 also states that the proposal should respect the existing topography, landscape character, streetscene and local distinctiveness of the surrounding area and should use appropriate, high quality materials which reinforce or enhance local distinctiveness. Any important local view into, out of or through the site should not be harmed.

Recent photographs provided by Red Roofs, Horncastle Road, Caistor (and as seen on a site visit on the 01/07/2022) show the storage of a large amount of cardboard and wood located towards the south western corner of the site which is open (northern boundary) to the road (B1225) beyond as there is a boundary treatment of wire mesh fencing in this location. There is also unsightly boundary treatments and a shipping container located on this part of the site.

This storage appears to be taking place on an area that was authorised for landscaping and tree planting.

The applicant states *“The layout of the completed site and the boundary treatments creates an enclosed courtyard type development screening the internal area of parking and hardstanding. Any storage of material/goods will therefore be well screened for views into the site and will not be detrimental to the AONB.”*

However, it is evident that the external storage of materials that has taken place in breach of the condition, is clearly visible and open to views from outside of the application site. The applicant’s claim that it is adequately screened is not convincing.

The application has not proposed any mitigation strategy (through screening / landscaping, for instance) that may otherwise be taken into consideration.

It is considered that removing this condition would allow the unrestricted outside storage of materials, goods and waste across the site and would harm the natural beauty of this landscape and have a visual impact on the street scene contrary to the NPPF and Policy LP17 and LP26 of the Central Lincolnshire Local Plan and the Lincolnshire Wolds AONB Management Plan.

Paragraph 56 of the National Planning Policy Framework states that planning conditions should only be imposed where they are:

1. Necessary
2. Relevant to planning
3. Relevant to the development permitted
4. Enforceable
5. Precise
6. Reasonable in other respects

When considering whether the condition should be removed, it is necessary to assess the retention of the condition against the six tests, outlined above. As shown above the condition is necessary, relevant to planning and the development permitted, it is precise, enforceable and reasonable.

It is considered that the condition is still needed to protect residential and visual amenity and would meet the six tests stated above. Having considered the application – the condition is still considered to be necessary and reasonable. It is therefore considered that the application to remove the condition should be refused.

Other Matters

Health & Safety

A neighbour claims there are health and safety breaches taking place on site. This application considers only the matter of condition 23 on the planning

permission – matters of health & safety are covered by legislation outside of the planning system.

Landscaping and Boundary Treatments

The following application (136232) discharged condition 2 (Landscaping and Boundary Treatments). The details discharged showed grass, a fence and 4 trees in the south western corner of the site. On the time of the site visit (01/07/2022) this area on the grass embankment contained 3 'bushes' and within the site the area was given over to hard standing and materials were being stored (wood and card board) and contained a shipping container. A green mesh fence has been erected with some wooden fencing behind.

136232 - Request for confirmation of compliance with conditions 2,3,4,5,6,7,9 and 10 of planning permission 135031 granted 14 December 2016. Conditions partially discharged 30/10/2018.

Recommendation: Refuse planning permission for the following reasons:

It is considered that the condition sought to be removed meets the six tests stated in Paragraph 56 of the NPPF.

Removing this condition would allow the unrestricted outside storage of materials, goods and waste across the site, without any mitigation measures, and would have the potential to adversely impact the residential amenity of neighbouring dwellings contrary to the NPPF and Policy LP26 of the Central Lincolnshire Local Plan. It is also considered that the removal of this condition would harm the natural beauty of this landscape which is located within the Lincolnshire Wolds AONB and have a visual impact on the street scene contrary to the NPPF and Policy LP17 and LP26 of the Central Lincolnshire Local Plan.

Human Rights Implications:

The above objections, considerations and resulting recommendation have had regard to Article 8 and Article 1 of the First Protocol of the European Convention for Human Rights Act 1998. The recommendation will not interfere with the applicant's and/or objector's right to respect for his private and family life, his home and his correspondence

Legal Implications:

Although all planning decisions have the ability to be legally challenged it is considered there are no specific legal implications arising from this report.