

OFFICERS REPORT

PLANNING APPLICATION NO: WL/2025/00462

PROPOSAL: Outline planning application to erect house and garage and use of land for parking of 3 HGV's in accordance with details received on 19 December 1991 to remove condition 3 of planning permission W75/872/91 granted 11 February 1992 - Occupancy condition.

LOCATION: TEN ACRES, TOP ROAD, OSGODBY, MARKET RASEN, LN8 3TG

WARD: MARKET RASEN

WARD MEMBERS: Cllr S Bunney, Cllr E L Bennett, Cllr M K Westley

APPLICANT NAME: Mr Field

TARGET DECISION DATE: 03/07/2025 (Extension of time agreed to 17th October 2025)

CASE OFFICER: Holly Horton

Recommended Decision: Refuse permission.

Description:

The application site is located in the open countryside in the wider parish of Osgodby, on the southern side of Top Road, and is situated approximately 1.7km to the south east of the defined settlement of Osgodby. The site consists of a detached two storey dwelling with associated outbuildings and amenity space. The site is adjoined by residential properties and their private garden areas to the east and west, by the open countryside to the south, and by 'Ten Acres Café' and its parking areas to the north, with the highway beyond. The site also lies within an Area of Great Landscape Value.

The application seeks to remove condition 3 of planning permission W75/872/91 granted 11th February 1992, which ties the occupancy of the dwelling to a person employed in the operation of 'Ten Acres Café'.

Condition 3 states the following:

"The occupancy of the house shall be limited to a person employed in the operation of the motor transport cafe, presently known as "Ten Acres Café", and the operation of the three HGVs.

Reason: It is the Policy of the District Planning Authority not to permit dwellings in the countryside outside approved Development Limits unless there is an essential need and in this case it is considered that it is necessary on the interests of security and the efficient operation of the café for the operator to be residing in close

proximity and because if the house is occupied by other persons the operation of the café and the parking of HGVs in close proximity would be detrimental to their residential amenities.”

Relevant history:

WL/2025/00460 - Planning application to alter and extend dwelling to create an annex to remove condition 2 of planning permission 96/P/0805 granted 16 January 1997 - occupancy condition – being considered alongside this application.

147690 - Planning application to alter and extend dwelling to create an annex being removal of condition 2 of planning permission 96/P/0805 granted 16 January 1997 re: occupancy of dwelling – Refused 31/01/2024

Reason for refusal:

‘The proposed removal of planning condition 2 of permission 96/P/0805 is unacceptable as it would result in an inappropriate form of development in the countryside. The lack of demand for the dwelling associated with the cafe has not been demonstrated. The proposal would therefore be contrary to Policy S1 and Policy S5 of the Central Lincolnshire Local Plan, and paragraph 84 of the National Planning Policy Framework. The application is therefore recommended for refusal.’

96/P/0805 – Planning application to alter and extend dwelling to create an annex – Granted with conditions 16/01/1997

96/P/0433 – Planning application to extend building – Granted with conditions 17/07/1996

W75/807/95 – Planning application to use land to park HGVs and trailers – Planning permission conditional 05/03/1996

W75/118/92 – Reserved matters application to erect house with integral garage granted outline planning permission on 11 February 1992. (Outline Application No. W75/872/91) – Reserved Matters Conditional Consent 11/03/1992

W75/872/91 – Outline planning application to erect house and garage and use of land for parking of 3 HGVs in accordance with details received on 19 December 1991 – Conditional Outline Consent 11/02/1992

W75/739/90 – Renew planning permission to erect bungalow granted on 15 August 1985 (W75/599/85) – Conditional consent 05/09/1990

W75/398/90 – Continue to site mobile home – Conditional consent 16/07/1990

W75/901/89 – Use land as a static caravan site – Refused 25/10/1989

W75/599/85 – Erect bungalow – Conditional consent 15/08/1985

W75/673/84 – Erect bungalow – Conditional consent 09/10/1984

W75/828/80 – Outline application to erect a single dwelling – Conditional Outline Consent 15/10/1980

W75/729/77 – Application to construct a storage distribution depot for petroleum oils – Refused 21/11/1977

Representations

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

Osgodby Parish Council: No representations received to date.

Local residents: No representations received to date.

LCC Highways and Local Flood Authority: No Objections. Having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact upon the local highway network or increase surface water flood risk and therefore does not wish to object to this planning application.

Comments: Planning proposal does not have an impact on the public highway.

LCC Archaeology: No archaeological input required.

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 in April 2023); the Osgodby Neighbourhood Plan (made July 2018); and the Lincolnshire Minerals and Waste Local Plan (adopted June 2016).

Development Plan

- ***Central Lincolnshire Local Plan 2023-2043 (CLLP)***

Relevant policies of the CLLP include:

S1: The Spatial Strategy and Settlement Hierarchy

S5: Development in the Countryside

- ***Osgodby Neighbourhood Plan (NP)***

Osgodby Neighbourhood Plan is silent on development in the countryside.

- **Lincolnshire Minerals and Waste Local Plan (LMWLP)**

The site is not within a Minerals Safeguarding Area, Minerals or Waste site / area.

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 December 2024. Paragraph 232 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)."

- **National Planning Practice Guidance**
- **National Design Guide (2019)**
- **National Model Design Code (2021)**

Main issues

- Principle of Development - Removal of Condition 3 of W75/872/91

Principle of Development

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Section 73 of the Town and Country Planning Act 1990 allows applications to be made for permission to develop land without complying with a condition previously imposed on a planning permission. It is colloquially known as 'varying' or 'amending' conditions.

Section 73 applications also involve consideration of the conditions subject to which planning permission should be granted. Where an application under s73 is granted, the effect is the issue of a fresh grant of permission and the notice should list all conditions pertaining to it.

Alterations to planning policy and other material considerations since the original grant of planning permission are relevant and need to be considered. Paragraph 56 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;

5. precise; and
6. reasonable in all other respects.

Condition 3 of W75/872/91 states the following:

“The occupancy of the house shall be limited to a person employed in the operation of the motor transport trade, presently known as “Ten Acres Café”, and the operation of the three HGVs.

Reason: It is the Policy of the District Planning Authority not to permit dwellings in the countryside outside approved Development Limits unless there is an essential need and in this case it is considered that it is necessary on the interests of security and the efficient operation of the café for the operator to be residing in close proximity and because if the house is occupied by other persons the operation of the café and the parking of HGVs in close proximity would be detrimental to their residential amenities.”

It should be noted that an application to remove the occupancy condition on the annexe that is contained within the dwelling, is also being applied for alongside this application (WLDC reference WL/2025/00460).

Assessment

Despite the passage of time since the original approval, the site remains in an isolated rural location for planning purposes. As such, in this instance, the effect of removing the condition is the grant of a fresh planning permission for the occupation of the dwelling and annexe on the site to be unrestricted.

Despite being separate applications, the dwelling and the annex form one planning unit (the annexe is contained within the main footprint of the dwelling), and the applicant has submitted the same planning statement and supplementary information for both applications, therefore one assessment will be undertaken for the site.

The applicant's statement in support of the removal of condition 2 of permission 96/P/0805 and condition 3 of W75/872/91 provides the following justification for the removal of the respective conditions:

- *“Ten Acre Café and the associated dwelling has recently changed ownership (February 2025).*
- *The occupancy condition has served its purpose by ensuring that the dwelling has been used in conjunction with the café since the dwelling was constructed circa 1992 – a period of 33 years.*
- *Overtime, there have been many changes to the café operation and its clientele. The fuel pumps no longer exist, and although it still serves as a Transport Café, it now also serves as a community Cafe and an important social hub, supplying meals to many elderly people from the surrounding area, many of whom use it every day for their main meal and social gatherings.*
- *The new owner (applicant) wishes to lease the Cafe on a long-term basis to a suitable individual or organisation who can continue to operate it to it's fullest*

potential. For this to happen the occupancy conditions relating to the dwelling must be removed so that separate Titles can be created, one for the Cafe and another for the Dwelling.

- *The Title for the Cafe would include associated site areas required for access, deliveries, and parking for staff and patrons. The Title for the dwelling will include the private garden areas. A right of way over the café would be retained but no formal alterations are required as per the previous application.*
- *In the site's current format, with the Occupancy Conditions in place, the two properties come as a package with no flexibility. The result being that the properties are not eligible for a typical mortgages resulting in significantly increased commercial borrowing rates. This limits opportunities to improve the prospects of the Café.*
- *The café is well used by locals as well as motorists. However, it is tired and in need of investment to secure longevity and commercial viability. If the Cafe was forced to close, it would present a significant loss to the community and motorists (particularly HGVs) who would struggle to find an alternative.*
- *The applicant wishes to make improvements to the café and maintain the current arrangements, but in order to borrow against the café, it needs to be on it's on title otherwise borrowing costs are too high resulting in any investment being unviable. A fundamental consideration here is that if the applicant were to shut down the café, he would still be able to live in the dwelling. This needs to be a planning consideration. Similarly, the applicant could reside in the dwelling and be "employed" by the café potentially on a zero hour contract– ultimately flouting the wording of the condition.*
- *The applicant is in the Motor Transport industry and wants to retain ultimate ownership of the café but be able to lease the café to Another to enable the café to trade effectively to it's fullest potential."*

The reason identified on the decision notice for the imposition of planning condition 3 of W75/872/91 for the outline permission for the original dwelling is clear: *"It is the Policy of the District Planning Authority not to permit dwellings in the countryside outside approved Development Limits unless there is an essential need and in this case it is considered that it is necessary on the interests of security and the efficient operation of the café for the operator to the residing in close proximity and because if the house is occupied by other persons the operation of the café and the parking of HGVs in close proximity would be detrimental to their residential amenities."*

The reason identified on the decision notice for the imposition of planning condition 2 of 96/P/0805 for the extensions and alterations to the dwelling to form an annex is clear: *"To ensure the dwelling is occupied by those having an interest in the immediately adjacent business, in the interests of residential amenity."*

Clearly planning permission would have been refused for the dwelling without the imposition of planning condition 3 of W75/872/91 and so it was necessary to make the proposal acceptable. This therefore explains why condition 2 of 96/P/0805 was necessary, as given the occupancy condition associated with W75/872/91, it would be consistent to expect that the annex be occupied by person/persons either employed or last employed in the running of the café. It is clear within a letter from the applicant within application 96/P/0805, that the extensions and alterations to the dwelling to form an annex were to allow the former applicant of the site, Mrs Barbara

Jessop, to *“live under the same roof but have our own privacy”*. This further demonstrates the necessity of the condition 2.

The planning conditions for W75/872/91 and 96/P/0805 at the time of their imposition were therefore necessary and reasonable and they are common conditions attached to such planning consents for dwellings in the countryside, so one can safely assume they are enforceable.

An assessment of the proposal against current planning policy is provided below in order to establish whether planning permission should be given without the imposition of the planning condition, which would be the effect of granting this S73 planning application.

Paragraph 84 of the NPPF seeks to avoid the development of isolated homes in the countryside unless one or more of specific circumstances apply. One of these (criterion a) relates to there being an essential need for a rural worker.

Policy S1 of the CLLP states, with regards to sites located within the countryside:

“Unless allowed by:

*a. policy in any of the levels 1-7 above; or
b. any other policy in the Local Plan (such as S4, S5, S34 or S43) or a relevant policy in a neighbourhood plan, development will be regarded as being in the countryside and as such restricted to:*

- that which is demonstrably essential to the effective operation of agriculture, horticulture, forestry, outdoor recreation, transport or utility services;*
- delivery of infrastructure;*
- renewable energy generation; and*
- minerals or waste development in accordance with separate Minerals and Waste Local Development Documents.”*

New dwellings in the open countryside are covered by Part D of Policy S5 of the Central Lincolnshire Local Plan. Given the proposal would result in a new dwelling in the countryside, the occupancy condition should remain, as required by Part D of Policy S5 which states that any such development will be subject to a restrictive occupancy condition.

The established approach for the removal of an occupancy condition associated with a dwelling is to undertake a marketing exercise in which the dwelling would be required to be put up for sale for 9-12 months (with a specialist agency if required) to see if any interest came forward from people who could meet the occupancy tie. This would normally include at least one price reduction to try and attract interest.

In this instance, following the refusal of application 147609 for the following reason, a marketing exercise was undertaken.

‘The proposed removal of planning condition 2 of permission 96/P/0805 is unacceptable as it would result in an inappropriate form of development in the countryside. The lack of demand for the dwelling associated with the cafe has not

been demonstrated. The proposal would therefore be contrary to Policy S1 and Policy S5 of the Central Lincolnshire Local Plan, and paragraph 84 of the National Planning Policy Framework. The application is therefore recommended for refusal.'

As a result of the marketing exercise, the dwelling and associated café were sold to the now applicant, which has in itself provided evidence to demonstrate that there is a demand for the dwelling and associated café with the conditions as stipulated within the existing permissions. As such, the marketing exercise is viewed as successful and has shown there is interest in the property and associated café.

As the properties were marketed by the previous owner of the site, no comprehensive details of the marketing exercise have been provided within this application, other than that the property was apparently sold to the applicant for significantly less than the original asking price.

It is noted that the main reasons for which the applicant is applying to remove the conditions is because *"the café is tired and in need of investment to secure the longevity and commercial viability"* and they wish to *"make improvements to the café and maintain the current arrangements, but in order to borrow against the café, it needs to be on it's own title otherwise borrowing costs are too high resulting in any investment being unviable"*. In addition the applicant *"wishes to lease the Cafe on a long-term basis to a suitable individual or organisation who can continue to operate it to it's fullest potential"*.

The private financial difficulties that the applicant is experiencing in wanting to make improvements to the café and in being unable to secure typical mortgages is noted however this is not considered a material planning consideration.

When considering this application against the previously refused application 147609, there have been no changes in the circumstances except from a change in ownership as a result of a successful marketing exercise. Some weight in the planning balance can be given to the information that it is clear that both the previous owner and the new owner wish to operate the site in the same way (have a lease on the café), however it is assumed that the owner would have been aware that they were buying a café in which the planning conditions on the dwelling/annexe require them to be employed in connection with the cafe.

it is clear that there is interest in the property and associated café.

Overall, considering the above, on balance, is concluded that the conditions on the respective permissions remain necessary and reasonable having regard to local policy concerning dwellings in the countryside. As such, the proposal fails to accord with Policy S5 of the CLLP, and the provisions of the NPPF.

Assessment of conditions on permission W75/872/91

A variation of condition application would create a brand-new permission in itself, therefore were it minded to approve the application, a review of conditions originally imposed on W75/872/91 would need to be undertaken. Without this, any new permission would be unrestricted. In the interest of clarity and simplicity, all conditions

would retain the same numerical order. If it were minded to approve the application, the reason for the conditions would be amended to reflect the relevant policies of the CLLP.

Condition 1 – time limit for submission of reserved matters

No longer required.

Condition 2 – submission of details for design, appearance and access of the building prior to erection.

No longer required.

Condition 3 – occupancy restriction

The subject of this application.

It should be noted that this condition also ties the café to the operation of the ‘three HGVs’. The applicant has detailed that *“this is to remain unchanged and will continue to support the café.”*. Therefore this element would need to be tied into any condition on any grant of permission.

Condition 4 – restriction on use of site to park HGVs until dwelling development has commenced

No longer required.

Condition 5 – improvement to vehicular access prior to commencement

No longer required.

Condition 6 – restriction on number of HGVs to be parked on the site

This condition remains relevant and necessary and should be included on any grant of planning permission.

Conclusion and reason for decision:

The proposal has been assessed against Policy S1: The Spatial Strategy and Settlement Hierarchy and Policy S5: Development in the Countryside of the Central Lincolnshire Local Plan in the first instance, as well as the guidance contained within the National Planning Policy Framework, National Planning Practice Guidance, National Design Guide, and National Model Design Code. Considering the above, refusal is recommended for the following reason:

1. The proposed removal of planning condition 3 of permission W75/872/91 is unacceptable as it would result in an inappropriate form of development in the countryside. The proposal is therefore in conflict with Policy S5 of the Central

Lincolnshire Local Plan and the provisions of the NPPF, and there are no material considerations that would outweigh that conflict.

Decision Level: Committee

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