

DEVELOPMENT MANAGEMENT
APPEALS LIST - 16TH DECEMBER 2022

APPLICATION NUMBER & SITE ADDRESS	APPEAL REFERENCE & STATUS	OFFICER & PROCEDURE
DM/0140/22/FUL The Stables Ashby Hill Ashby Cum Fenby North East Lincolnshire DN37 0QF	AP/016/22 INPROG	Richard Limmer Written Representation
DM/0536/20/FUL Land Adjacent To 83 Brigsley Road Waltham Grimsby North East Lincolnshire DN37 0LB	AP/017/22 INPROG	Richard Limmer Written Representation
DM/0495/22/ADV Freestanding Advertisement Railway Place Grimsby North East Lincolnshire	AP/018/22 INPROG	Emily Davidson Written Representation
DM/0046/22/TPO 24 Park Avenue Grimsby North East Lincolnshire DN32 0DQ	AP/020/22 INPROG	Paul Chaplin Fast Track

DM/0068/22/OUT Land South Of Church Lane Humberston North East Lincolnshire	AP/019/22 INPROG	Richard Limmer Informal Hearing
---	-------------------------	--

DM/0154/22/FUL East Ravendale Farm East Ravendale Grimsby North East Lincolnshire DN37 ORX	AP/021/22 INPROG	Richard Limmer Written Representation
---	-------------------------	--

--	--



Appeal Decision

Site visit made on 21 November 2022

by **B S Rogers BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/B2002/C/22/3302724

**Land r/o Paragon House, Kiln Lane, Stallingborough, North East
Lincolnshire, DN41 8DQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by KIA UK Limited against an enforcement notice issued by North East Lincolnshire Council.
 - The notice was issued on 9 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of lighting columns and associated lighting units on the land.
 - The requirement of the notice is to remove the unauthorised lighting columns and associated lighting units.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of lighting columns and associated lighting units on land r/o Paragon House, Kiln Lane, Stallingborough, North East Lincolnshire, DN41 8DQ referred to in the notice, subject to the following condition:

The lighting units hereby permitted shall not be switched on or operated until a scheme detailing:

- i. which lighting units may be operated;
- ii. the intensity and colour balance of the lighting; and
- iii. the installation of shields to control any light spill beyond the site boundary

has first been submitted to, and approved in writing by, the local planning authority.

Thereafter, the lighting units shall not be switched on or operated other than in strict accordance with the approved scheme.

The appeal on ground (a) and the deemed application

2. The appeal site comprises some 17ha of a low-lying estuarine landscape, which forms an extension to a large industrial area to the NW and NE of the site boundary. The site is enclosed by North Moss Lane to the SW and by South

Marsh Road to the SE, beyond which is open countryside. Planning permission was granted in June 2016 for 'Engineering works and use of land for external car parking, internal site access works, boundary works, and other associated works' (Ref: DM/0147/16/FUL). Whilst this permission included the installation of 4 lighting columns, it was not implemented as approved and 13 lighting columns with associated lighting units, the subject of this notice, were erected instead.

3. The main issues in this case are the impact of the development on the living conditions of neighbouring residents and on the ecology and biodiversity of the adjoining Stallingborough Cress Marsh Strategic Habitat Mitigation Site (HMS).

Residential amenity

4. There are 2 residential properties close to the boundary of the site, Grasmere on North Moss Lane and Poplar Farm on South Marsh Road. Views of the appeal site from these properties are seen against an extensive industrial backdrop, including overhead power lines and their associated pylons. In this context, it is my view that, in the daytime, the lighting columns do not comprise an unacceptable visual intrusion and do not unduly conflict with policies in the North East Lincolnshire Local Plan 2013-2032 (NELLP) designed to protect the character of the area and the living conditions of residents.
5. Turning to the hours of darkness, the Council's assessment of the 2016 approved scheme noted that the nearest lighting column would be over 200m from the front elevation of Grasmere and that light spillage would result in a minimal amount of additional light, with no undue harm to the amenities of the occupants.
6. However, turning to the lighting scheme now installed, The Council's Environment Protection Team considers it to cause a significant adverse impact on neighbouring residential properties. The appellants' submitted lighting assessment appears to confirm this view and this appears consistent with my own observations of the appeal site and its surroundings in the hours of darkness. I conclude that, as currently installed, the lighting units unduly harm the living conditions of neighbouring residents, contrary to the aim of the development plan.

Ecology and biodiversity

7. I understand that the HMS to the South of the appeal site was set aside in mitigation of the expansion of the industrial area of which the appeal site now forms part. This land forms a buffer zone and is functionally linked to the internationally important Humber Estuary SSSI, SAC, SPA and Ramsar designations.
8. The appellants have provided an ecological review of the site surrounds, concluding that few of the species for which the above designations were made would be likely to be present on the adjoining mitigation land. This review concludes that there may be a small impact on bat species but that suitable modification to the lighting could mitigate this. The Council considers the light spill to reduce the effectiveness of the adjoining land to perform its intended function, particularly in respect of the accommodation of wintering birds. My own observation during my site visit was of a significant degree of light spill, quite clearly illuminating the adjoining land in question.

9. The Natural Environment and Rural Communities Act 2006 imposes a duty to have regard to the purpose of conserving biodiversity. Biodiversity 2020¹ points to the importance of retaining buffer land to ensure better protection for designated sites themselves and to establish coherent ecological networks. This theme is repeated in the National Planning Policy Framework and in the NELLP. In my view, there is no clear evidence that the lighting does not cause harm and therefore, given the policy background, it is prudent to avoid any potential adverse impact. In the absence of suitable mitigation, I conclude that the lighting units unduly diminish the ecology significance of the adjoining HMS.

Other matters

10. In addition to the undue impact on neighbouring residents in the hours of darkness, the lights are visible and obtrusive in the wider landscape, from more distant viewpoints, such as from the A1173 to the West. In my view, this is an unduly obtrusive feature of the night time landscape, contrary to the aim of NELLP Policy 42 to have regard to the wider landscape context.

The planning balance

11. The appeal site has the benefit of planning permission and the principle of its use as a car storage compound is not in dispute. Strategic Objective 3 of the NELLP points to the importance of infrastructure to support economic development. The Council accepts that lighting is necessary on this site for security purposes – and of course approved 4 lighting columns in 2016.
12. The key question is therefore whether a suitable planning condition can enable the development to be retained, where it would otherwise have been necessary to refuse planning permission. This would require the objections to the scheme as it stands to be overcome, whilst still enabling the site to be adequately lit for security purposes.
13. In considering this matter, I have borne in mind three factors. First, the lighting units can be operated individually, such that any units that can not be suitably mitigated can be switched off. Second, the light units can be replaced by ones of lesser intensity and/or with a different colour spectrum. Third, suitably designed shields can ensure that light spill beyond the site boundary does not reach a significant level. In this context, I am persuaded that there is a realistic prospect that the planning objections can be overcome by a condition requiring the submission, approval, implementation and retention of a lighting scheme. This appears to me to fulfil the relevant tests set out in the Planning Practice Guidance.
14. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted, subject to the condition set out above.

B S Rogers

INSPECTOR

¹ Biodiversity 2020: A Strategy For England's Wildlife and Ecosystem Services



Appeal Decision

Site visit made on 1 November 2022

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2022

Appeal Ref: APP/B2002/W/22/3298941

Flat 5 – Rear of 11 Rowston Street, Cleethorpes DN35 8QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr Daniel Ramsden against the decision of North East Lincolnshire Council.
 - The application Ref DM/0038/22/FUL, dated 11 January 2022, was refused by notice dated 31 March 2022.
 - The development proposed is alterations to flat 5, rear of 11 Rowston Street to add additional storey, re clad building with red and vertical board and create new entrance/windows onto Brooklands Avenue with alterations and erection of boundary treatments.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development on the decision notice includes for the removal of an existing container, and I have determined the appeal accordingly.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the character and appearance of the area.
 - The effect of the proposed development on the living conditions of the occupiers of adjacent properties, in relation to outlook, privacy and daylight/sunlight.

Reasons

Character and appearance

4. The appeal site is located within a residential setting to the rear of an existing end-terraced property. The proposed development would front onto Brooklands Avenue which is a very unique and distinctive area as a result of its style, form and arrangement of dwellings. Whilst the properties vary in height, form and roof shape, the properties largely retain their original character which is that of a traditional appearance with a broadly consistent materials pallet. As a result of the distinctive form and character, Brooklands Avenue is read differently from adjacent streets including Segmere Street despite its close proximity.
5. The existing property is modest in size with a simple appearance and is well shielded from views along Brooklands Avenue given the single storey element

- and timber fence. Whilst the property has a simplistic appearance, this results in it being relatively discrete, and the proposed development would introduce an additional storey at first floor level which would have a totally modern/contemporary approach in its finish, form and design including materials which would be at odds with/jar with the more simplistic form and features of the host property and character of the area.
6. The dwelling would be highly visible when viewed from Brooklands Avenue including approaching the site along that road as well as approaches from Segmere Street as a result of its increase in height. This, together with the proposed finish, form and design including materials would result in the property appearing overly prominent in comparison to other properties and would be a stark contrast to the more traditional character. A condition relating to the type and final colour of the proposed boarding as suggested would not sufficiently mitigate against such harm nor would further landscaping as it would still introduce a design at odds with the traditional appearance of other properties along Brooklands Avenue.
 7. The character of Segmere Street and its contribution to the area is not comparable to Brooklands Avenue as referred to above given its overall distinctive form and character. Therefore, the other scheme referred to is not directly comparable to the one before me.
 8. Although a previous permission for 2 dwellings at the site included 2 storey properties, the design and materials more closely reflected the surrounding properties. Therefore, that scheme is materially different to the one before me.
 9. I conclude that the proposed development would unacceptably harm the character and appearance of the area. As such, it would be contrary to Policies 5 and 22 of the North East Lincolnshire Local Plan which together, amongst other things, seek to ensure a thorough consideration has been had to a sites context as well as protecting and enhancing character and local distinctiveness. The proposed development would also be contrary to chapter 12 of the National Planning Policy Framework relating to achieving well-designed places.

Living conditions

10. Whilst the appeal site would be visible from adjacent properties, particularly from No. 13C Rowston Street, this would be at an angle given the position of the property and its windows with wide outlook still retained and thus would not cause an unacceptable overbearing impact. The windows located within the rear elevation of the host property No.11 which has been converted into 4 flats would allow for only partial views given the overall position of the property. Such limited views coupled with the separation distance would again not cause an overbearing impact.
11. Two of the proposed rear first floor windows would be obscure glazed serving bathrooms. Given the angle of the proposed bedroom window there would only be angled views towards neighbouring properties and their amenity space.
12. The area between the appeal site and neighbouring properties is the only outdoor amenity space serving these units. However, this area is already overlooked by windows on the existing building. Additionally, windows at No. 13C as well as the flats to the front already face onto this space. The proposed development would not therefore unacceptably increase levels of overlooking

over and above the existing situation or what can be reasonably expected within a residential area. The obscure glazing element and angled position of the proposed window at first floor level would also minimise levels of overlooking.

13. Whilst I am unable to control the existing situation in regard to daylight and sunlight, I am content that the proposed development would not result in an unacceptable harm over and above the existing situation given the overall distance between properties and height and width of the proposed development. There is also no clear evidence to the contrary of the findings of the shadow study complete which I have considered. Consequently, I consider that overall, existing occupiers would not be unduly harmed by daylight and sunlight.
14. I conclude that the proposed development would not harm the living conditions of the occupiers of adjacent properties in relation to outlook, privacy and daylight/sunlight. As such, it would accord with Policy 5 of the North East Lincolnshire Local Plan which, amongst other things, seek to protect neighbouring land uses from visual intrusion.

Other matters

15. There have been no technical objections raised from a number of statutory consultees and the site is located in an accessible location. However, such factors would not be sufficient to outweigh the harm identified taking into account the character and appearance of the area.

Conclusion

16. Although the development does not harm the living conditions of adjacent properties, the proposed development would harm the character and appearance of the surrounding area and would therefore conflict with the development plan when considered as a whole. There are no material considerations, either individually or in combination, that outweighs the identified harm and associated plan conflict. I conclude that the appeal should therefore be dismissed.

N Teasdale

INSPECTOR