

Planning Committee



SOUTH
KESTEVEN
DISTRICT
COUNCIL



Thursday, 30 May 2024 at 1.00 pm
Council Chamber - Council Offices,
St. Peter's Hill, Grantham. NG31 6PZ

Committee Members: All Members of Planning Committee

Agenda Supplement

4. **Application S24/0092** (Pages 3 - 5)
- Proposal:** Section 73 application to vary condition 4 (Noise Management Plan/No of dogs) of S20/0479 (use of land for doggy day care centre, erection of building, driveway and hardstanding) variation is to increase number of dogs allowed on site at any one time from 20 to 40
- Location:** Poplars Farm, High Street, Carlby, PE9 4LX
- Recommendation:** To authorise the Assistant Director – Planning to GRANT planning permission, subject to conditions.
5. **Application S23/1177** (Pages 7 - 15)
- Proposal:** Construction of a retail foodstore, car parking, access, landscaping and associated engineering works
- Location:** Land North of West Road Bourne Lincolnshire PE10 9PS
- Recommendation:** To authorise the Assistant Director of Planning to APPROVE planning permission subject to the conditions set out in section 8 of this report.

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Additional Information Report

This report sets out additional information in relation to planning applications for consideration at the Planning Committee on 30 May 2024 that was received after the agenda was published.

S24/0092

Proposals: Section 73 application to vary condition 4 (Noise Management Plan/No.of dogs) of S20/0479 (use of land for doggy day care centre, erection of building, driveway and hardstanding) variation is to increase number of dogs allowed on site at any one time from 20 to 40

Site Address: Poplars Farm, High Street, Carlby, Stamford, PE9 4LX

Summary of Information Received

Following the publication of the main report, an additional public representation has been received from Carlby Parish Council making additional comments to the application scheme. The material considerations raised within the representation can be summarised as follows:

1. The initial application received no objections from the Parish Council until breached and numbers of dogs exceeded the 20 dogs allowed. Intervention by the Planning Enforcement Officer and a reversion to 20 dogs ensued and noise disturbance no longer became an issue. So, an increase in dog numbers has been shown to be directly correlated to nuisance barking.
2. The Maggie's Mates van transporting the dogs now display the logo 'Bark and Ride'. We feel this encourages nuisance barking showing no concern for residents.
3. As 'dog walking' dogs run free and are not walked on leads (as confirmed by the owners) Increasing dog walking numbers to 40 will result in a total of 60 dogs running around free at the site with the potential for nuisance barking.

A further representation was received from a local resident and the material considerations raised can be summarised as follows:

4. Concern regarding the hours of operation published within the Agenda, which are as follows:

The premises shall not be used for the purposes authorised by this permission other than between the following hours:

- i. 06:30hrs - 19:00hrs on Mondays to Fridays*
- ii. 12:00hrs Saturdays - 01:00hrs Sunday mornings*
- iii. 17:00hrs - 23:00hrs Sundays and Bank Holidays*

The resident suggests that Condition 2 should also be revised to more 'sensible operating times'.

5. Further to the above, Condition 3 in the published agenda states that the reason for the condition is "to prevent disturbance to the amenities of the occupants of the site", which is assumed to be an error.

Evaluation

It is Officer's assessment that the matters raised in Points 1, 2 and 3 above do not raise additional matters beyond those assessed within the main report. However, Point 4, regarding the proposed hours of operation, does raise additional matters beyond those assessed within the main report.

In granting permission under section 73 the local planning authority may also impose new conditions - provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. The hours of operation granted in the original permission (Condition 3 of S20/0479) do not appear to be reflective of how the site is currently operated, nor of what was originally proposed. It is therefore an opportunity to revise the hours of opening condition so that the proposed opening times, should this new application be approved, are in accordance with the Noise Management Report and in accordance with how the business is operated. It is considered that the revised opening times would not impact upon the residential amenities of neighbouring occupiers, as set out in the main agenda. The Environmental Protection Team have assessed the proposal based on the opening times contained within the Noise Management Plan and have raised no objections. It is further accepted that the 'reason' for Condition 3 (as published in the agenda) is incorrect and that it had been incorrect in the original approval (S20/0479).

As such, it is Officer's position that the recommendation remains as per the original report, subject to a revised schedule of conditions.

Recommendation

To authorise the Assistant Director – Planning to GRANT planning permission, subject to the following proposed schedule of conditions.

1) List of Approved Plans:

- i) The development hereby permitted shall be carried out in accordance with the following list of approved plans:
- ii) i. JDA/2020/385/BLOCK/001B received 8 May 2020
- iii) ii. JDA/2020/385/OS/001A received 8 May 2020
- iv) iii. JDA/2020/385/PROP/001B received 3 August 2020

- v) iv. JDA/2020/385/LIGHTING/001B received 3 August 2020
- vi) Unless otherwise required by another condition of this permission.

Reason: To define the permission and for the avoidance of doubt.

2) Ongoing Conditions:

The premises shall not be used for the purposes authorised by this permission other than between the following hours:

- i) 07:30hrs - 18:00hrs on Mondays to Fridays
- ii) 09:00hrs – 14:30hrs Saturdays and Sundays (and Bank Holidays)

unless otherwise agreed in writing by the Local Planning Authority.

Reason: Operation of the use outside these hours would result in unacceptable levels of noise nuisance to local residents, contrary to Policies EN4 and DE1 of the South Kesteven Local Plan.

3) The development hereby permitted shall be carried out in accordance with the Noise Management plan dated 17 January 2024.

Reason: To prevent disturbance to the amenities of the nearby residential occupiers of the site and in accordance with Policies EN4 and DE1 of the adopted South Kesteven Local Plan.

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S23/1177

Proposals: Construction of a retail foodstore, car parking, access, landscaping and associated engineering works

Site Address: Land North of West Road Bourne Lincolnshire PE10 9PS

Summary of Information Received

Following the publication of the main report, the following additional information has been received:

1. 14 additional public representations;
2. Further letter of objection from Martin Robeson Planning Practice (MRPP) on behalf of Tesco Stores Ltd.

Representations received from members of the public

Following the publication of the main report, 14 additional public representations have been received, 11 in objection and 3 in support of the application scheme. The material considerations raised within the representations can be summarised as follows:

Objection

1. The scheme does not benefit from substantial support from the local community;
2. The proposed scheme would harm the character of the area;
3. Increased traffic;
4. Impact on Bourne Woods;
5. Existing light pollution on the roundabout;
6. Potential for further development on West side of Bourne;
7. The site is in the open countryside;
8. Alternative preferable sites including Elsea Park, zone10B;
9. Increased pollution will harm environment;
10. The proposal will increase flood risk;
11. Harm to local ecology and wildlife;
12. No need for additional supermarket;
13. Highway safety crossing West Road;
14. Site acts as fire break from woods.

Support

1. Need for another supermarket on this side of Bourne;
2. Location will allow some residents to access without using a car;
3. The site is not in the woods, but adjacent to a developed residential area.

Further objection from Martin Robeson Planning Practice (MRPP) on behalf of Tesco Stores Ltd.

Following the publication of the main report, a further letter of objection has been received from Martin Robeson Planning Practice (MRPP) who act for Tesco Stores Ltd. The letter raises the following points:

1. The proposal conflicts with Local Plan Policy SP4a, b and c;
2. Ecological harm arising from loss of biodiversity;
3. Inappropriate approach to decision making process.

1 Evaluation

- 1.1 The majority of the above points are already covered in the main Officer report, however the following report addresses additional points that have been made.

2 Principle of development

- 2.1 The scope of the community consultation exercise was agreed in pre-application discussions between Officers and the applicant. The consultation exercise set-out in the Statement of Community Involvement (SCI) is thorough and proportionate in relation to the proposed development. As set-out in the main Officer report, it is the Case Officer's opinion that the SCI provides clear evidence of substantial support from the local community for the proposal at the point of submission and therefore the requirements of Policy SP4a are met both in terms of scope and evidence of support.
- 2.2 The main Officer report is clear that the Officer assessment is that the scheme is considered to be well designed and appropriate in size / scale, layout and character to the setting and area and that Policy SP4b is therefore complied with. It is accepted that there would be localised and limited visual effects as a result of the proposal, however it is Officers' judgement that this does not necessarily equate to a harm to the character of the area or a policy conflict as asserted in the MRPP letter.
- 2.3 The separation between the application site and the residential properties on Fir Avenue is accepted, however the site is directly opposite the northern edge of the Elsea Park residential development and is therefore considered to be adjacent to the existing pattern of development for the area and compliant with Policy SP4c.
- 2.4 In terms of consideration of alternative sites, the applicant has carried out a sequential assessment of alternative sites. This included consideration of Elsea Park, zone 10B, which was previously allocated for B1, B2 and/or B8 uses and now has planning permission for 50 dwellings, which are currently being constructed. This site was equivalent to the proposed site in sequential terms, and is not available for the proposed development. The applicant also considered the Jewson site at Great Northern Gardens, which became available during the course of the application, but was assessed as being too small and therefore not suitable for the proposed development. The Council engaged an independent retail consultant (Urban Agile) to assess the proposals and their advice is that there are no sequentially preferable sites available that are suitable for the proposed development and the proposed development will not give rise to significant adverse impacts on the town centre.
- 2.5 MRPP previously suggested that a condition should be applied to any permission that restricted the retail use to 'deep discount retailing'. This was based on the assertion that the type of retail use could have materially different impacts on the town centre. Urban Agile have advised that such a condition is not necessary as it would not make a material difference in terms of turnover or overall trade diversion from other destinations.

- 2.6 However, they did advise that there is potential to significantly change retail impacts if the development were to be occupied by a comparison retailer rather than used as a foodstore. Therefore, in order to ensure that the proposed development operates on the basis on which it has been assessed, a condition restricting no more than 80% of retail floorspace to convenience sales and no more than 20% to comparison sales is recommended.

3 Ecology and Biodiversity

- 3.1 A significant volume of the concern in relation to the proposed development is regarding the proximity of the site and the potential for harmful impacts to Bourne Woods. The rear boundary of the proposed site is approximately 125m from the southern edge of Bourne Woods.
- 3.2 The Ecological Impact Assessment that accompanies the application considers the impact of the proposal on Bourne Woods both during the construction and operational phases of the development. The assessment concludes that any potential harms can be sufficiently mitigated through a Construction and Environmental Management Plan (controlling dust, noise and lighting) and an appropriate lighting scheme when operational. Recommended condition 5 has been updated to specifically reference dust, noise and lighting and the need for these to be mitigated during construction. Likewise, the wording of condition 12 has been amended to require submission of further details of a biodiversity mitigation plan, based on the recommendations in the Ecological Impact Assessment. In addition, the requirement for an off-site biodiversity compensation scheme (condition 4) and details of any operational lighting (condition 5) are recommended. Subject to compliance with these conditions, the scheme is considered to be in accordance with Local Plan Policy EN2 and the National Planning Policy Framework (para 186).

4 Other matters

- 4.1 Fire risk - As set-out above, the proposal would maintain a 125m open space between Bourne Woods and the development site. Lincolnshire Fire & Rescue have been consulted on the proposal and not raised any fire safety concerns. Appropriate Fire Safety measures would be secured through compliance with Approved document B (fire safety) as part of the Building Regulation approval process.

5 Decision making

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise. The Council adopted the South Kesteven Local Plan 2011-2036 on 30 January 2020, and this forms the Development Plan for the District, and is the basis for decision-making for the current application.
- 5.2 The Development Plan has primacy in decision making and the weight to be attributed to other material considerations is for the decision maker. There are often competing factors when considering a development proposal and the principles from *Cornwall v Corbett* 2020 outlines the correct way to balance competing policies in a Development Plan.
- a. The section 38(6) duty can only be properly performed if the decision-maker establishes whether or not the proposal accords with the development plan as a whole: BDW Trading Ltd at [21].*
- b. Development plan policies can "pull in different directions", i.e. some may support a proposal, others may weigh against it: Rochdale at [48].*

c. A decision maker is required to assess the proposal against the potentially competing policies and then "decide whether in the light of the whole plan the proposal does or does not accord with it": *City of Edinburgh* at p1459D-F.

d. This is not a mathematical or mechanical exercise. It is not a question of counting: *Dignity Funerals* at [68]-[70].

e. This exercise calls for a series of judgments to be made, which may include determining the relative importance of the policy, the extent of any breach.

5.3 The main Officer report is clear at 7.9 that having assessed the proposal, officers consider that: *"The proposed development is therefore considered to be in accordance with the development plan, when taken as a whole, and there are no material considerations to indicate otherwise."* In such circumstances, development proposals should be approved without delay. While the MRPP letter and other representations assert that the proposed development conflicts with the development plan (SP4a, b, c and EN2) these judgments are not agreed by officers for the reasons set-out above.

5.4 The full schedule of recommended conditions and reasons is set-out below, with the updates and additional conditions noted above made. Other minor updates to recommended conditions have been made following an officer review of trigger points and against required tests for planning conditions.

Recommendation

To authorise the Assistant Director – Planning to GRANT planning permission, subject to the following proposed schedule of updated conditions:

Time Limit for Commencement

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason: In order that the development is commenced in a timely manner, as set out in Section 91 of the Town and Country Planning Act 1990 (as amended).

Approved Plans

2. The development hereby permitted shall be carried out in accordance with the following list of approved plans:

- Site Location Plan drawing no. H20A44-STO_ZZ_XX_DR_A_0001
- Proposed site plan drawing no. H20A44-STO_ZZ_XX_DR_A_0003 Rev P01
- Proposed Elevations drawing no. H20A44-STO_ZZ_XX_DR_A_0005 Rev P01
- Proposed Boundary Treatments drawing no. H20A44-STO_ZZ_XX_DR_A_0007 Rev P01
- Proposed Floor plan drawing no. H20A44-STO_ZZ_XX_DR_A_0004
- Proposed Roof plan drawing no. H20A44-STO_ZZ_XX_DR_A_0006

Reason: To provide clarity as to what drawings have been approved.

Before the Development is Commenced

3. Before the development hereby permitted is commenced, the archaeological investigations in the approved written scheme of archaeological investigation (WSI) (ULAS Job Nos: 24-704) must be carried out and a report submitted to the Local Planning Authority for approval.

Reason: In order to provide a reasonable opportunity to record the history of the site and in accordance with Policy EN6 of the adopted South Kesteven Local Plan and the NPPF (section 16).

4. Prior to the commencement of the development hereby approved, a Biodiversity Compensation Scheme shall be submitted to and approved in writing by the Local Planning Authority. This shall include a habitat creation method statement to demonstrate how a minimum of 2.92 habitat units will be delivered off-site. The habitat creation shall be implemented in accordance with the approved details and retained thereafter for a period of at least 30 years.

Reason: To ensure that the scheme compensates for the significant harm to ecological habits in accordance with the requirements of Policy EN2 of the Local Plan and Paragraph 186 of the NPPF.

5. The development hereby permitted shall be undertaken in accordance with a Construction and Environmental Management Plan and Method Statement that shall first be approved in writing by the Local Planning Authority. The Plan and Statement shall indicate measures to mitigate the adverse impacts of vehicle and construction activity and the means to manage the drainage of the site during the construction stage of the permitted development. It must include:

- the timetable of the construction phase to include access construction;
- details of noise, dust and lighting mitigation measures during construction as recommended by the Ecological Impact Assessment report ref: RT-MME-159662-04;
- waste management details during construction;
- the on-site parking of all vehicles of site operatives and visitors;
- the on-site loading and unloading of all plant and materials;
- the on-site storage of all plant and materials used in constructing the development;
- wheel washing facilities;
- the routes of construction traffic to and from the site including any off-site routes for the disposal of excavated material and;
- strategy stating how surface water run off on and from the development will be managed during construction and protection measures for any sustainable drainage features. This should include drawing(s) showing how the drainage systems (temporary or permanent) connect to an outfall (temporary or permanent) during construction.

Reason: In the interests of the safety and free passage of those using the adjacent public highway and to ensure that the permitted development is adequately drained without creating or increasing flood risk to land or property adjacent to, or downstream of, the permitted development during construction. In accordance with Policies EN5 and ID2 of the Local Plan and Sections 9 and 14 of the NPPF.

6. Prior to the store being brought into use, a scheme for off-site highways works relating to a pedestrian crossing of West Road and access to the site (following the principles of General Arrangement Plan drawing no. AMA-40046-D-100) shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full prior to the use commencing on-site, and shall be retained thereafter.

Reason: To ensure a suitable form of pedestrian access is delivered in the interests of highway safety in accordance with the requirements of Policy ID2 of the Local Plan and the NPPF.

7.No development shall commence on site (including preparatory works) until a tree and hedgerow protection plan has been submitted to and approved in writing by the Local Planning Authority. The approved plan shall be fully implemented in accordance with the approved details throughout the construction phase.

Reason: To ensure that the important, established landscape features are protected during the construction process and to comply with DE1 and EN2 of the South Kesteven Local Plan 2011-2036.

8.Prior to the commencement of the development hereby permitted above ground level, details of the materials to be used in the construction of the external facing facades of the building and entrance walls shall be submitted to the Local Planning Authority in writing for approval. Sample panels of the proposed external surfacing materials (stonework and a timber) at a least a metre squared (showing where appropriate the proposed coursing, method of pointing of mortar) shall be erected on site for consideration and subsequent approval. The panels shall be retained on site until the completion of the works. The development shall be implemented in accordance with the approved details.

Reason: To protect the visual amenities of the locality and comply with Policy DE1 Adopted South Kesteven Local Plan 2011-2036 and comply with the aims and objectives of the NPPF.

9.Prior to the commencement of development hereby permitted details of the hard landscaping materials for the car park, walkways and areas surrounding the building shall be submitted to and approved in writing by the Local Planning Authority.

The development shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing by the LPA.

Reason: To protect the visual amenities of the locality and comply with Policy DE1 Adopted South Kesteven Local Plan 2011-2036 and comply with the aims and objectives of the NPPF.

10.No development shall be carried out (other than site preparation works) until a detailed surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include the measures to be installed together with a timetable for implementation. The works shall thereafter be carried out fully in accordance with the approved strategy.

Reason: To prevent flooding and to comply with Policy EN5 of the South Kesteven Local Plan.

11.No development shall commence on site (other than preparatory works) until a soft landscaping scheme (following the principles of the Landscape Strategy Report No. 1059/R02) has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall provide details of:

- location of planting together with details of species and size
- timetable for the planting of shrubs and trees
- strategy for maintaining and protecting the approved planting

The development shall thereafter be carried out and maintained fully in accordance with the approved scheme.

Reason: Soft landscaping and tree planting make an important contribution to the development and its assimilation with its surroundings and in accordance with Policies DE1, EN3 and OS1 of the adopted South Kesteven Local Plan (2011-2036).

12. Before development is commenced, a biodiversity mitigation and enhancement scheme (for on-site hedgerow habitats) based on the recommendations contained within the Ecological Impact Assessment report ref: RT-MME-159662-04 must be submitted to and approved by the Local Planning Authority.

The scheme shall include a plan identifying the location of any mitigation and enhancement measures, along with a detailed schedule (and technical details as relevant) for each of the measures proposed. The required biodiversity mitigation and enhancement measures shall be completed in full, in accordance with the agreed scheme, prior to the first use of the store.

Reason: in the interests of best ecological practice, and in accordance with Policy EN2 of the adopted South Kesteven Local Plan.

Before the Development is Occupied

13. Before any part of the development hereby permitted is occupied/brought into use, all hard landscape works shall have been carried out in accordance with the approved hard landscaping details pursuant to condition 9.

Reason: Hard landscaping makes an important contribution to the development and its assimilation with its surroundings and in accordance with Policy DE1 of the adopted South Kesteven Local Plan.

14. Prior to the first occupation of any part of the development hereby approved, a Travel Plan for employees of the development shall have been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be implemented in accordance with the approved details.

Reason: In the interests of promoting sustainable travel in accordance with SD1 of the adopted South Kesteven Local Plan 2011-2036.

15. Prior to the store being brought into use, details of external lighting, together with times of illumination shall be submitted to and approved in writing by the Local Planning Authority. Once approved the lighting shall be installed and managed in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of the locality and in the interests of protecting ecology and biodiversity in accordance with Policies DE1 and EN2 Adopted South Kesteven Local Plan 2011-2036 and comply with the aims and objectives of the NPPF.

16. Prior to the installation of any sub-station, details of its location and appearance shall first be submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the visual amenities of the locality and comply with Policy DE1 Adopted South Kesteven Local Plan 2011-2036 and comply with the aims and objectives of the NPPF.

17. Prior to the store first being brought into use, the pavements and cycle way shall be fully formed in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of promoting sustainable travel in accordance with SD1 of the adopted South Kesteven Local Plan 2011-2036.

Ongoing Conditions

19. The operational hours for the proposed food store hereby permitted shall only operate between the following hours and days; 08:00 - 22:30 hours Monday to Saturdays (including bank/public holidays) 10:00 - 20:00 hours on Sundays.

Reason: To protect the amenities of the locality and comply with Policy DE1 Adopted South Kesteven Local Plan 2011-2036 and comply with the aims and objectives of the NPPF.

20. Within a period of ten years from the first occupation of the development hereby permitted, any trees, hedging or plants provided as part of the approved soft landscaping scheme, that die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced in the first planting season following any such loss with a specimen of the same size and species as was approved in condition above.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs and in accordance with Policy DE1 of the adopted South Kesteven Local Plan.

21. No more than 80% of the net retail sales area of the approved foodstore shall be used for convenience sales and no more than 20% for comparison sales.

Reason: To ensure the development operates as assessed and in accordance with Policy BRN2 of the South Kesteven Local Plan 2011-2036 (January 2020) and the NPPF.

Financial Implications reviewed by: Not applicable

Legal Implications reviewed by: Not applicable

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