

**DILHAM PF/20/0002 - Change of use from B1 Light industrial to car repairs (retrospective);  
Carls Auto Repair Services Unit 1 Granary Works Honing Road Dilham North Walsham  
NR28 9PR**

**Minor Development**

**- Target Date: 02 March 2020**

Case Officer: Mr J Pavey-Smith

Full Planning Permission

**RELEVANT SITE CONSTRAINTS**

LDF Tourism Asset Zone

Enforcement APPEAL

LDF - Countryside

C Road

**RELEVANT PLANNING HISTORY**

PLA/2005/1974 PF Potato store new barn, Honing Road, Dilham change of use of building from agricultural to B1 (light industrial) Approved 13/02/2006.

PF/18/0606: Change of use from B1 light industrial to Sui Generis (car repairs) & erection of compound fence (part retrospective). Refused 04/01/2019 for the following reasons:

*In the opinion of the Local Planning Authority the proposal constitutes an unacceptable form of development in the Countryside policy area where development is limited to that which requires a rural location. It is considered that the applicant has failed to demonstrate satisfactorily that there are material considerations to justify a departure from Development Plan policy in this case and as such, the proposal is contrary to Policy SS 2.*

*Furthermore, it is not considered that the proposed use is appropriate in scale and nature to the rural location, nor represents the sustainable growth or expansion of a business in a rural area, with no evidence provided of a specific need for such a business in the locality, contrary to Policy EC 2 and Paragraph 84 of the National Planning Policy Framework.*

An Enforcement Notice (ENF/18/0046) was subsequently served and an appeal (Ref: APP/Y2620/C/19/3223988) against the notice was made by the applicant.

The appeal was dismissed on 5 March 2020 with the Inspector making minor variations to the Enforcement Notice including a longer period for compliance, such that in summary, it requires:

- (i) Cease the use of the land for a car repairs (sui generis) use.
- (ii) Remove all waste, car parts and tools in relation to the car repair business from the Land
- (iii) Permanently remove the shipping container from the Land

The varied notice was served on the 13/03/2020. The six months for compliance therefore lapsed on the 13/09/2020 and the applicant is therefore liable for prosecution in court.

## THE APPLICATION

The application is for retrospective change of use of the building from B1 (light industrial) use to car repairs (a sui generis use). The car repairs business started operating from the site in February 2018 and the unauthorised use has continued since that time, despite the refusal of planning permission in January 2019 and the dismissed enforcement. As noted above the period for compliance with the notice has now elapsed and the applicant is therefore liable for prosecution for the continued operation of the business. Prosecution has been stayed to allow for determination of the current applications.

The building consists of a part brick/part metal clad structure measuring approximately 22m x 27m. It sits within a sizeable site with a gravelled parking/turning area to the north (front) of the building, storage space alongside the east elevation, a roadside hedge along the eastern boundary and landscaping to the north-west and alongside the western and southern elevations. The site is served by a single shared access point off Honing Road. Six residential properties lie immediately to the south of the building and are served by the same access.

## REASONS FOR REFERRAL TO COMMITTEE

At the request of the Head of Planning, local interest and material planning considerations e.g. nuisance, disturbance, highway safety, sustainability / settlement hierarchy and economic development.

## PARISH/TOWN COUNCIL

Dilham Parish Council continues to object to this change of use on the basis that a car repair business is not appropriate for this site because it is within a residential area. The site has operated now for 2 years and two members of the Parish Council live adjacent to the site.

The site has not been operated within the agreed work time scale. The car numbers have built up and the site is now crowded with cars during the day. Also, cars have been parked outside overnight.

This provides a very poor reflection on entering the village. The driveway entrance is shared with residential properties with the added risk of collision. The volume of traffic to the site from the A149 down a single-track road has increased both the risk of collision and congestion. There is already a long-established car repair facility in Dilham on an appropriate site. From the adjacent houses both a shipping container and scrap cars are visible.

## REPRESENTATIONS

One letter of objection from occupiers of the nearby homes: Comments summarised as follows:

- This is a repeat of the original application which was rejected by NNDC. It is understood that there is an independent final hearing against that decision on February 4th.
- During the last two years there has been a noticeable increase in activity and no regard for the environment and safety of the entrance driveway leading to private houses. During the last two years there have been many near misses with cars and delivery vans just cutting up private traffic coming to and from the houses.

- There is an increase of cars and vans left around overnight and the shipping container, other vans and tyre skip have not moved.
- The working practices go beyond the norm. There is more pollution, more noise and more disruption.
- This is a site that should be on an industrial estate not at the entrance to a rural setting.
- Cannot support the application for the change of use as nothing has changed from the original application, it has only got worse.

## CONSULTATIONS

Norfolk County Council (Highway) - No objection. The proposal (as before) utilises an existing industrial building which would clearly generate vehicular activity, potentially involving large or HGV traffic. There is also some sustainability benefit in having local car repair workshops which reduce the distance travelled for rural communities to have car repairs carried out. Conditions and informative are requested, which are the same as recommended for the previous application.

Economic Growth Team: - No objection. It is recognised that there are potential economic benefits that would be derived by such a proposal, including employment generation and supply chain development.

Environmental Health: - No objections subject to conditions relating to the following matters:

- -No plant, equipment, vehicles or machinery to be operated on the premises and no deliveries taken or dispatched from the site outside the hours of 08:00 – 18:00 Monday to Friday, 0800-1300 Saturdays, nor at any time on Sunday, Bank or Public Holidays.
- no repairing of vehicles or storage of scrap cars outside the building at any time and no storage of materials or waste outside the building at any time, except where waste is contained in appropriate waste receptacles for collection by a licenced waste contractor.
- No plant, equipment, vehicles or machinery to be operated externally other than for access and egress from the site.
- No valeting or washing of cars via the use of a pressure washer anywhere on site. No vacuuming shall take place outside the building.
- All external doors and windows to the building to be kept shut at all times during working hours apart from when providing access for personnel and visitors, deliveries and the movement of plant and equipment to and from the building.
- No paint spraying to take place at the site
- full details of any ventilation, air conditioning, refrigeration or mechanical extractor systems or any other plant and equipment to be installed as part of the approved development, to be submitted to and approved in writing by the Local Planning Authority.

Prior to the installation of any external lighting, details to be submitted to and approved in writing by the Local Planning Authority.

## HUMAN RIGHTS IMPLICATIONS

It is considered that the proposed development may raise issues relevant to Article 8: The Right to respect for private and family life.

Article 1 of the First Protocol: The right to peaceful enjoyment of possessions.

Having considered the likely impact on an individual's Human Rights, and the general interest of the public, refusal of this application as recommended is considered to be justified, proportionate and in accordance with planning law.

#### CRIME AND DISORDER ACT 1998 - SECTION 17

The application raises no significant crime and disorder issues.

#### POLICIES

##### **North Norfolk Core Strategy (Adopted September 2008):**

SS 1: Spatial Strategy for North Norfolk

SS 2: Development in the Countryside

SS 5: Economy

EN 2: Protection and enhancement of landscape and settlement character

EN 4: Design

EN 13: Pollution and hazard prevention and minimisation

EC 2: The re-use of buildings in the Countryside

CT 5: The transport impact of new development

CT 6: Parking provision

##### **National Planning Policy Framework (NPPF):**

Section 2 – Achieving sustainable development

Section 6 – Building a strong, competitive economy

Section 12 - Achieving well-designed places

Section 15 - Conserving and enhancing the natural environment

#### MAIN ISSUES FOR CONSIDERATION

- Principle
- Design
- Residential amenity
- Highway impact
- Landscape impact
- Environmental impact

#### APPRAISAL

##### Background:

Following the refusal of planning application PF/18/0606, an appeal was submitted, but was turned away by the Planning Inspectorate as the appeal deadline for the refusal of planning permission had passed. However, an appeal against the Enforcement Notice that was subsequently served. The grounds of enforcement appeal included Ground (A), i.e. that in the appellant's view planning permission should be granted. The Inspector concluded that planning permission should not be granted, this supported the decision by the local planning authority to refuse planning permission.

A copy of the report for the meeting of the Development Committee on 4 January 2019 is attached as **Appendix A**.

A copy of the Appeal Decision for appeal ref: APP/Y2620/C/19/3223988 is attached at **Appendix B**.

Principle/Planning History (Policies SS 2, EC 2 and NPPF Para's 83(a) and 84):

It is clear that the car repairs business is significant activity, and certainly a larger operation than could be envisaged within the context of the permitted B1 (light industrial) use, e.g. noting the size of the existing building and the number of cars parked within the site. It is considered that the proposed use still does not comply with Core Strategy Policy SS2 as the proposed use does not require a rural location. In addition, the proposal fails to comply with Policy EC 2 due to the size of the business not being appropriate in scale and nature to the location. Furthermore, the proposed use does not conform to the aims of NPPF Paragraphs 84. This was upheld by the planning inspectorate under Appeal Ref: APP/Y2620/C/19/3223988.

Given the previous refusal and the appeal decision, the main issue is therefore whether there have been any material changes in the planning circumstances since then or if the current application is substantially address those reasons for to that refusal dismissal of the appeal (ground A). The refused application was considered against policies in the North Norfolk Core Strategy, which is still in force, and the then current version of the NPPF (Feb 2019) which has not changed.

Compared to the refused application, the current application includes a statement by the operator of the business. For the benefit of members of the committee, a copy of this statement is attached as **Appendix C**. This however, appears to be substantively similar to the statement submitted to the Planning Inspectorate in support of the enforcement appeal.

Both the Development Committee and the Planning Inspector have previously concluded that benefits resulting from the development do not outweigh the conflict with development plan polices and the harm resulting from the car repairs use. Nothing has substantially changed since then and as such, albeit regrettably given the business could potentially close, resulting in a loss of jobs, it is considered that the recommendation must remain for refusal.

The site has an outstanding planning enforcement notice which has been upheld by the planning inspectorate under Appeal Ref: APP/Y2620/C/19/3223988. The planning inspectorate supported the Councils case to remove the business from the site under Enforcement notice ENF/18/0046. The applicant's case was dismissed. The varied notice was served on the 13/03/2020. The six months for compliance therefore lapsed on the 13/09/2020. The notice period has ceased and the applicant is therefore liable for prosecution for unlawful operation of the business. The Council will review enforcement action with the application and local community following the Committee's decision, any case for extended compliance will need to be carefully considered in terms of local public interest on matters of safety and amenity.

Design (Policy EN 4):

Regarding design, no alterations are proposed to the existing building. The application proposes an additional 1.82m high fence along part of the eastern site boundary, alongside an existing hedge, which would help to screen existing storage areas alongside the eastern side of the building. The proposed fencing does not raise any major design concerns. At present, due to the level of outdoor storage and parking, the site has adopted a more industrial look, however, taking note of the consultation responses received and associated conditions required seeking the limitation of external working and storage, much of the visual impact of the proposed use could

be addressed. On balance, it is considered that in regards to design, the proposals are acceptable against the aims of Policy EN 4 of the Core Strategy.

#### Residential amenity (Policy EN 4):

The nearest residential properties lies directly to the south of the building. One objection has been raised in regards to the proposed use, in particular relating to noise and visual impact created by the proposed use. The site has an existing lawful B1 use (previously occupied by a steel fabrication business) and as part of acceptance of that use a number of strict conditions were suggested by the Environmental Protection Officer and imposed in order to control noise from the site, specifically in regards to the installation of acoustic insulation, hours of use, keeping doors closed, amongst other measures.

The proposed use, being for car repairs, raises similar issues, particularly in regards to whether it will result in any additional noise impact upon nearby residents. No formal objection has been raised by the Environmental Protection Officer. Instead, it is expected that significantly restrictive conditions would be imposed to ensure that the previously installed insulation remains installed and maintained appropriately, and with controls over hours of use, keeping doors closed and preventing external working.

The key consideration regarding compliance with Policy EN 13 is whether, even with such conditions imposed, the proposed use is acceptable given the proximity to nearby residents.

In particular, the operation of the site is considered to be, materially different to the previous building use, due to the greater level of vehicular movement into/out of the site which itself creates noise, and the likelihood that the garage shutter doors will be frequently opened/close to allow vehicles/equipment in/out of the building. This is partially ameliorated by the positioning of the current access/doors on the northern side of the site. If complied with then the suggested conditions may limit the level of noise/disruption and may be sufficient to comply with Policy EN 4, though a level of concern remains, particularly as to the appropriateness of such a facility being located immediately adjacent to residential properties.

If the use is approved, it is essential to ensure that the conditions are strictly complied with and enforced robustly where breached.

In respect of visual amenity, concern has been raised in regards to the visual impact of parked cars and storage of waste externally which is stated by residents to have resulted in an overly industrial appearance of the site and with a resultant visually unappealing outlook. At stated earlier in regards to design, this matter can be satisfactorily controlled through the imposition of conditions to maintain an acceptable visual appearance. The matter is then one for balance of probability in terms of the applicant's compliance

#### Environmental considerations (Policy EN 13):

As referred to above, the original acceptance of the use of the building for B1 purposes was made under previously adopted policy, and on the basis of strict conditions proposed by the Environmental Protection Officer, given the nature of the proposed business at the time. The matter of noise has been addressed above in relation to amenity and raises similar concerns in regards to compliance with Policy EN 13. The suggested conditions will help to control operations within the site to alleviate any noise impact as much as practically possible.

In terms of the potential for pollution and impact on drainage, much of the external area of the site consists of gravel/soft landscaping and as such, consideration has been made of the potential for chemical/oil leakage given the proposed use and the current storage of vehicles/waste externally.

However, subject to conditions to prevent the storage of vehicles externally, (except for staff/customer parking) and the suitable provision of waste receptacles (further details of which would be required) it is considered that this matter could be satisfactorily addressed to comply with Policy EN 13.

Landscape impact (Policy EN 2):

The position of the site on the edge of the village and adjacent open countryside requires consideration of any potential landscape impact. The site is at present relatively enclosed within a hedged site boundary. Given that no changes are proposed to the external appearance of the existing building, and subject to limitations on external working/storage, it is not considered that the proposed use will have a significantly detrimental impact upon the appearance of the surrounding landscape and as such, the proposed use would be broadly compliant with Policy EN 2.

Highways impact (Policies CT 5 and CT 6):

The Highway Authority have not raised an objection (stating the same conditions as PF/18/0606 the previous application) to the proposed change of use, subject to access improvement works, to include the widening of the existing access point and improved visibility splays

As such, although there are concerns from an officer perspective in regards to the current access arrangements, with no objection from the Highway Officer, it is not considered that refusal based upon the current arrangements can be substantiated under Policy CT 5. Plenty of space exists within the site for both staff and customer parking and as such, the proposed use complies with Policy CT 6.

Conclusion:

It is considered that the proposed use would not accord with the aims of Core Strategy Policy SS2 which seeks to limit development to that which requires a rural location, nor with Paragraph 84 of the NPPF. In this respect, the applicant has not sufficiently demonstrated why a rural location is necessary for the business, nor that there is a community need for the business. Furthermore, it is not considered that the size of business proposed is appropriate in the context of the rural locality, in what is considered to be an unsustainable location, contrary to Policy EC 2. No convincing mitigating circumstances have been put forward to outweigh the policy conflict identified. In addition to this, the Development Committee will need to consider whether the potential noise impact of the proposed use upon the amenity of nearby residential properties can be sufficiently mitigated through appropriate conditions, and balance of probability for their compliance in order to comply with Policies EN 4 and EN 13.

## **RECOMMENDATION:**

Refuse for the following reason:

The District Council adopted the North Norfolk Core Strategy on 24 September 2008, and subsequently adopted Policy HO 9 on 23 February 2011, for all planning purposes. The following policy statements are considered relevant to the proposed development:

SS 1 - Spatial Strategy for North Norfolk

SS 2 - Development in the Countryside

EC 2 - The re-use of buildings in the Countryside

The National Planning Policy Framework (NPPF) (published 27 March 2012) is also material to the determination of the application. The following sections are considered relevant:

Section 6 – Building a strong, competitive economy (paragraph 84)

In the opinion of the Local Planning Authority the proposal constitutes an unacceptable form of development in the Countryside policy area where development is limited to that which requires a rural location. It is considered that the applicant has failed to demonstrate satisfactorily that there are material considerations to justify a departure from Development Plan policy in this case.

Furthermore, it is not considered that the proposed use is appropriate in scale and nature to the rural location, nor represents the sustainable growth or expansion of a business in a rural area, with no evidence provided of a specific need for such a business in the locality, contrary to Policy EC 2 and Paragraph 84 of the National Planning Policy Framework.

Final wording of reasons to be delegated to the Head of Planning