

APPLICATION NO PA/2012/1111

APPLICANT Mr M Godfrey, Amvale Ltd

DEVELOPMENT Planning permission for a minor material amendment to previously approved application PA/2012/0345 to retain the amended height and position of a smoking shelter

LOCATION Jolly Miller, Brigg Road, Wrawby

PARISH **WRAWBY**

WARD Brigg and Wolds

CASE OFFICER Ron White

SUMMARY RECOMMENDATION **Grant permission subject to conditions**

REASONS FOR REFERENCE TO COMMITTEE Third party request to address the committee

POLICIES

National Planning Policy Framework: No specific policies apply.

Regional Spatial Strategy for Yorkshire and the Humber: No specific policies apply.

North Lincolnshire Local Plan: Policy DS1 (General Requirements) provides general design guidance for all new developments.

North Lincolnshire Core Strategy: No specific policies apply.

CONSULTATIONS

Highways: No objections.

Environment Team (Historic Environment Record): No objection.

Environmental Protection Team: Raise concern that the smoking shelter is very large and will in effect be an outdoor pub with people congregating and drinking for much longer periods than they would in a beer garden. This may lead to noise and disturbance for nearby residents. It is imperative that music is not played within or broadcast adjacent to the shelter which provides little or no acoustic abatement. Should permission be granted suggest conditions:

1. No beverages shall be consumed within the smoking shelter.
2. No noise-making equipment, including but not limited to televisions, stereos, speakers, radios, microphones, amplifiers, karaoke machines and PA systems shall be situated within or affixed to the smoking shelter.

3. Performance of singing, music or use of musical instruments, including but not limited to guitars, drums, pianos or keyboards, shall not be permitted within the smoking shelter.

If the conditions are not acceptable, then recommend refusal.

PARISH COUNCIL

No objections but make the following comments:

- The revised position and height of the smoking shelter makes a significant difference to overlooked properties in The Old Stack Yard.
- The parish council is surprised that the original planning permission has not been adhered to in that the height of the shelter and distance from the main building have changed considerably, particularly as this request comes after the shelter has been built.
- The building was already quite a size for a smoking shelter and it is suggested that adding over 600mm to the height and positioning it 1.5m closer to the main building was not done in error.

PUBLICITY

Neighbouring properties have been notified and one letter has been received raising the following concerns, together with some non-material planning considerations:

- doubt if proposal can be classed as 'minor' material change
- overshadowing of neighbour's garden
- too large for a smoking shelter with food, barbecues and background music anticipated
- general disturbance to neighbours through additional noise
- if planning permission cannot be revoked it should be lowered to original height and north side enclosed with south-west corner kept open to compensate and comply with 50% rule for smoking shelters

ASSESSMENT

This application was considered by the Planning Committee on 12 December 2012 and deferred for a site visit, it was subsequently deferred again for further legal advice.

The application relates to a smoking shelter which has been erected adjacent to the Jolly Miller public house on Wrawby Road for which planning permission was granted (together with extensions to the pub) under delegated powers in May 2012. The construction of the building is now complete but its height, position and detailed design on two side elevations differ from what has been approved so planning permission is now being sought for a minor material amendment. Due to a structural design amendment the overall height of the shelter has been increased by 685mm (5m to 5.7m). In order to achieve the required eaves height of 1915mm the eaves overhang has had to be increased to approximately 810mm. The position of the smoking shelter has been moved 1200mm further north from its previously approved position. This is due to the fact that the kitchen extension also granted under

PA/2012/0345 has, in error, been built 300mm shorter than approved. Hence the gap between the shelter and the rear of the extended kitchen is 4000mm instead of 2500mm. In addition, the layout of the side infill panels has been amended, whereby 50% of the east elevation nearest to the dwellings on The Old Stack Yard has been infilled to help reduce possible noise impact on occupiers of these dwellings.

The main issues which need to be addressed in determining this application are whether the amended design and position of the smoking shelter are acceptable and whether it would have any adverse impact on the amenity of neighbouring properties.

The size of the smoking shelter reflects its dual purpose – to accommodate smokers and a secondary use as a seating area where customers can drink and eat when the weather permits. The fireplace and chimney is operational and the building has been furnished with tables and chairs and a TV for the comfort of patrons. The building is substantial but similar to the previously approved scheme. Its timber-framed design and the red pantile roof matches the existing public house. The increased height of the structure by 685mm or its movement away from the main building by 1200mm is not a significant difference.

The objector maintains that the smoking shelter will overlook and overshadow his property to the east on The Old Stack Yard but this is difficult to substantiate since the shelter is approximately 7.5m from the intervening boundary. In terms of noise impact the dwelling has no first-floor windows or habitable ground floor windows along its western elevation and there is a 1.8m high close-boarded timber fence along the boundary which should help reduce noise levels. However, more significantly, the public house has a beer garden immediately adjacent to the objector's property where customers can congregate without any restrictions. In addition, and to further mitigate potential noise disturbance, a section of the east elevation of the shelter nearest to the objector's property has been infilled which should help contain noise within the shelter.

The Environmental Protection team has suggested a condition that no drink should be consumed within the smoking shelter but this is felt to be inappropriate and difficult to enforce. They have also suggested a condition to control noise-making equipment, singing and use of musical instruments in the shelter. However, the applicant has subsequently confirmed in writing that this will not take place. It is intended to provide background music to create a pleasant atmosphere for customers but the applicant does not wish to have a time restriction applied to its use. Environmental Protection have their own legislation to prevent noise nuisance in residential areas. Planning is controlling the activity in line with planning guidance and should Environmental Protection consider there is a problem it is their prerogative to use their own legislation. No such conditions were attached to the previous approval, although at that time Environmental Protection recommended conditions to stop drinking in the shelter and to enclose the north and west elevations.

Members should be aware that at the previous Planning Committee on 16 January 2013 there was a debate about whether or not extra conditions could be placed upon the minor material amendment. After taking further legal advice, it is apparent that further conditions can only be placed on a minor material amendment if it mitigates the variation in some way. Therefore it has to directly relate to that which has been applied for, i.e. the amendment makes the condition necessary. If it is not possible to link the new condition directly to the amendment, the imposition of the condition is not reasonable and therefore fails to meet the five tests laid out in Circular 11/95. Taking the advice into account it is considered that in this case the amendments being sought do not necessitate the imposition of further

conditions as the amendment is for the variation of the height and size, not what it is being used for. Conditions for the use of the outdoor shelter were not imposed on the original application (PA/2012/0345).

Should members consider that the amendments are not minor, or that the change in design and use of the building is unacceptable, this application could be refused permission and a fresh application insisted upon. However, the recommendation is that the amendments being sought are reasonable as they relate to the height and position of the shelter, and concerns raised in relation to noise from the shelter can be addressed through Environmental Health legislation.

RECOMMENDATION Grant permission subject to the following conditions:

1.

The development shall be carried out in accordance with the following plans: JM/11/01, JM/12/02, JM/12/02A and JM/12/07 Rev C. In all other aspects the development shall be constructed in accordance with planning permission PA/2012/0345 dated 14 May 2012.

Reason

For the avoidance of doubt and to ensure the development is carried out in accordance with the approved details.

2.

The development shall be carried out in accordance with the amended details received by the local planning authority on 6 December 2012.

Reason

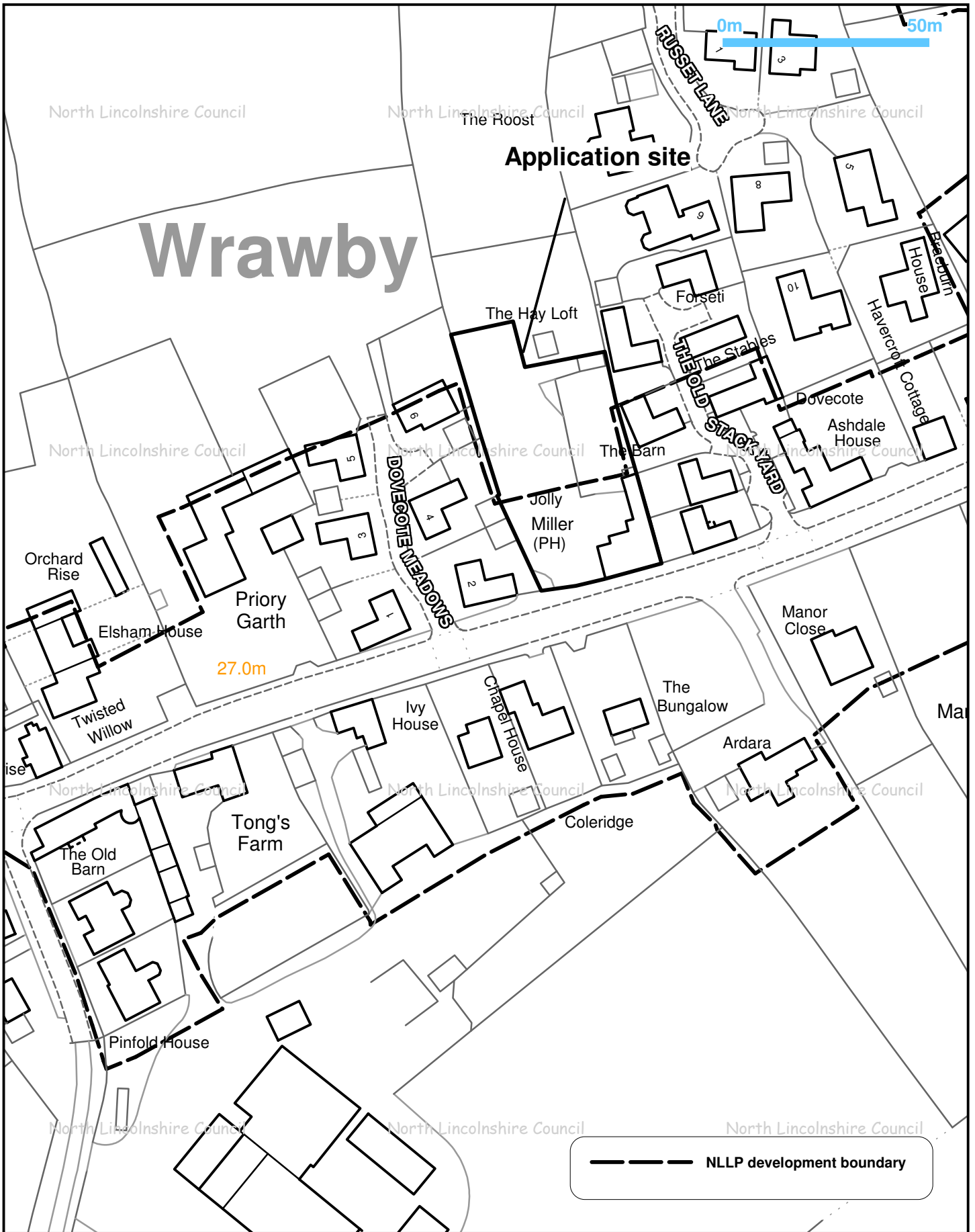
To define the terms of the permission for the avoidance of doubt.

Reasons for approval

The council, as local planning authority, has had regard to the relevant policies of the development plan as set out below and considers that, subject to compliance with the conditions attached to the permission, the proposed development would be in accordance with the development plan, would not materially harm the character of the area nor the living conditions of neighbouring occupiers, and would be acceptable in all other planning considerations. The council has taken into account all other matters, none of which outweigh the considerations that have led to its decision. The policies taken into consideration in the determination of this application are policy DS1 of the North Lincolnshire Local Plan.

Informative

In determining this application, the council, as local planning authority, has taken account of the guidance in paragraphs 186 and 187 of the National Planning Policy Framework in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the area.



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