

APPEAL REFERENCE : APP/W9500/W/22/3308341

**APPEAL UNDER SECTION 78
OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**Appeal by Egton and Mulgrave Estates
Site Address: Land north-east and east of High Street, Egton,
Whitby, North Yorkshire, YO21 1UA**

Comments on LPA Statement and 3rd party representations



MULGRAVE
— ESTATE —

EGTON ESTATE

JUSTUM PERFICITO. NIHIL TEMETO

January 2023

Comments submitted on behalf of the Egton and Mulgrave Estates on LPA statement and 3rd party representations in respect of APP/W9500/W/22/3308341

1. 3rd party representations

1.1 Ian Woodcock

1.1.1 No additional comments.

2. Consultation Responses

2.1 North Yorkshire County Council – Lead Local Flood Authority

2.1.1 No additional comments

2.2 Scarborough Borough Council

2.2.1 The NYMNPA webpage for this application/appeal shows an additional consultation response from Scarborough Borough Council. It is unclear whether the Planning Inspectorate has seen the response as it was not in the documentation forwarded to the appellants. The document can be found here, and the online description clearly indicates it is related to this appeal.

http://planning.northyorkmoors.org.uk/northgate/documentexplorer/application/stream.aspx?target=http%3A%2F%2Flocalhost%2FNorthgate%2FDocumentExplorer%2FDocumentStream%2FDocumentStream.aspx%3Fname%3D2023-01-09%2B-%2BPublic%2B-%2BAppeal%2B-%2BConsultation%2BResponse.pdf%26unique%3D817296%26type%3DNLPL_DC_PLANAPP

2.2.2 The consultation response indicates that the local authority has no comment to make. The appellants have no further comments to add other than to bring the existence of this response to the Inspectorate's attention in case it has been missed in error.

3. Comments on the Statement of the Local Planning Authority – North York Moors National Park Authority

3.1 The appellants have a number of comments to make on the statement submitted by the North York Moors National Park Authority in respect of this appeal. These are set out below.

Paragraph 6.2 of the LPA statement:

3.2 The appellants disagree that the appeal site imparts a soft edge to the village. When entering the village from the north, the edge of Egton is clearly marked by the two dwellings known as Flushing Meadow and Abbotsford and the speed limit sign. The appeal site is hidden from view on that approach to the village by the presence of the two dwellings.

Paragraph 6.3 of the LPA statement:

3.3 The appellants disagree with the LPA statement that the site ‘provides. important views out into the surrounding countryside’. The part of the site that is currently used for car parking is substantially different in character than the adjacent field and is separated from it by the current treeline which ‘prevents’ views from the car park across open countryside rather than ‘provides’ them.

Paragraph 6.5 of the LPA statement

3.4 The LPA refer to concerns expressed by Environmental Health with regard to possible noise disturbance to both the proposed and existing residential development. The application proposes (and this is set out in the original design and access statement at paragraph 4.9) uses that would be largely those that were

formerly B1 Light Industrial (and are now E (g) Uses which can be carried out in a residential area without detriment to its amenity:

- **E(g)(i)** Offices to carry out any operational or administrative functions,
- **E(g)(ii)** Research and development of products or processes
- **E(g)(iii)** Industrial processes

3.5 By their very categorisation such uses can be carried out in a residential area without detriment to its amenity. Amenity being a term generally employed when describing impacts such as noise, dust, pollution and vibration. The appellants therefore disagree that the proposed industrial units have the potential to cause noise disturbance to both the proposed and existing residential areas. Particularly, if they were conditioned to be Use Class E (g) only. Proposed condition 14 in the LPA statement is seeking to do this although it refers to B2 and B8 uses and does not mention those within Use Class E, which is what is being applied for.

3.6 The matter may have been complicated by the fact that the NYMNPA Planning Application form refers to B1 uses (which have been superseded) and does not include the E class.

3.7 The original application documentation acknowledges that there may be some B2 which is consistent with the garage and workshop uses already adjacent. However the issue of noise could be overcome by use of condition e.g. proposed condition 25 and an amended proposed condition 14.

3.8 It is noted that despite being consulted on the appeal, Scarborough Borough Council as the relevant Environmental Health authority have not raised objections .

Paragraph 6.4 of the LPA statement

3.9 This paragraph makes the following statement:

“ Furthermore, in the last year the appellants have gained planning permission to convert two ranges of barns into principal residence accommodation (five dwellings

in total). One of these ranges has had previous planning permission in place for conversion to five office units, the other with a previous permission for light industrial uses. These previous permissions were not implemented, presumably because there was no demand for them”.

3.10 This statement is somewhat vague. It does not provide any details of such applications in terms of application numbers, locations or even which of the applicants it is referring to; it also make an assumption about ‘demand’ without providing any evidence. This paragraph of the LPA statement is subjective and not substantiated and therefore should be disregarded. The appellants are both unclear as to what applications are being referred to .

3.11 The reasons for refusal of the application do not refer to the establishment of need or demand for industrial units and indeed neither does the relevant policy. The LPA is introducing a new element by including this in their statement. In correspondence between the Agent and the case Office (letter dated 21st January 2022 – supplied with the appeal documentation), it is made clear that:

“Both the Egton and Mulgrave Estates are regularly approached by new businesses and existing businesses in the area who are seeking to expand or require new premises. Both have records of the approaches that they have received, and these could be made available (subject to confirmation around data protection issues). Whilst there are businesses which happily occupy traditional farm buildings, they are not suitable for all and therefore the investment in new buildings by the Estates that is presented by this proposal is wholly consistent with Strategic Policy K which seeks to broaden and diversify the economy of the National Park.”

3.12 This point is also reiterated in the appellants original appeal statement of case at paragraph 7.12. The LPA has not asked to see such information at any point during this application. Indeed when the application was being considered at the committee meeting, in answer to a question from one of the members about employment sites, the Director of Planning made it clear that new employment uses

should be directed towards the Whitby Business Park . This approach does not help to ‘broaden and diversify the economy of the National Park’ nor does it contribute to the economic and social sustainability of rural settlements within the National Park if all new employment is to be directed to Whitby. The National Park has a duty to “*foster the economic and social well-being of local communities whilst pursuing the National Park purposes*”. The proposed employment uses contained in the application would help to achieve this and therefore there is a public benefit to be derived from the proposal.

Paragraph 6.5 of the LPA Statement

3.13 This paragraph of the LPA statement concludes that there is inadequate justification that the proposed car park would benefit identified needs of both the community and visitors to the National Park. This is a slightly misleading interpretation of the first two criteria of Policy BL1 which read as follows:

“New parking facilities will only be permitted where:

- 1. It is the only way to solve existing identified parking problems;*
- 2. It will benefit the needs of both communities and visitors to the National Park;”*

3.14 The policy wording and the LPA interpretation as set out the statement are subtly different. The policy requires the car park to be the only way of solving an identified parking problem and to benefit the needs of both communities and visitors. Neither the policy itself nor the supporting text given any further detail on how the existing parking problems are to be identified (presumably other than long term photographic evidence of a problem) nor does it provide guidance on how to establish the identified needs of communities and visitors.

3.15 In the absence of specific guidance on how to implement criteria 1 and 2 of the policy, the appellants statement of case contains a number of photographs which clearly demonstrate the car parking problems that exist in this part of Egton. These will be also clear to view when the Inspector conducts the site visit as these problems occur all year round and are not just seasonal. Whilst they are exacerbated in the summer months due to the presence of more visitors, when walkers use the area to park then access the various footpath networks; the area experiences parking issues in the winter months also which impact upon residents and local businesses (the community). The provision of a car park in this location, with enhanced capacity would provide a secure and safe location for visitors to park and would also provide an alternative for the many vehicles that are currently parked on street at the entrance to the Conservation Area, thereby providing a visual improvements to the edge of the Conservation Area and also for the community.

Paragraph 6.6 of the LPA statement

3.16 The statement refers to the possible location of 12th century Egton as part of the appeal site. The statement does make it clear that this is not verified. It should be noted that the LPA has not been able to provide any other archival or historical documentation to substantiate this point.

3.17 It is noted that there is not an up to date Conservation Area Appraisal for Egton and therefore the judgements made by the LPA about impacts from the proposed development on the Conservation Area are made without that more detailed and systematic evidential assessment.

3.18 The LPA statement refers to the Egton Show. The show is a one day a year show that takes place on the on the field. The LPA in correspondence prior to the determination of the application (letter dated 6th January 2022 from the LPA to the Agent) indicated that they were considering refusing the application with the loss of the Egton Show as a potential reason for refusal. The LPA did not pursue that further

when it became clear that the Estates had been in discussions with the Egton Show committee (prior to submission of the application) about an alternative site , that a new site had been found and that the Egton Show committee did not object to the application. Furthermore the application would only result in the loss of part of the field and the show would have been able to continue on the remainder of the site. The preference of the Show Committee was to secure a brand new site. The LPA is now seeking to reintroduce the loss of the show has an issue by way of the statement and suggests that the show field has communal value linked to the Conservation Area and that the loss of the show field would be to the detriment of the communal values of the site and the Conservation Area. The Egton Show is a one-day annual show. The existence of a Conservation Area Appraisal would have been beneficial here as it could identify the experiential, communal , historical and architectural values of the Conservation Area.

Paragraph 6. 7 of the LPA Statement

- 3.19 This paragraph refers to a lack of ecological information to accompany the application. This is not referred to in the reasons for refusal of the application and is being introduced at this late stage. The application was submitted in outline. The application was validated by the LPA and there has never been a request made for further ecological information. This information of course would be happily supplied by the appellants if so requested but also would accompany any reserved matters application following the outline. The LPA have covered the issue in proposed condition 20.
- 3.20 The paragraph also refer to the likely creation of an area of hardstanding. This was not referred to in the reasons for refusal and is being introduced at this late stage . It is noted that the Local Lead Flood Authority has not objected to the application or appeal and that the LPA has covered the issue with proposed condition 19.

Paragraph 7.2 of the LPA statement

3.21 The LPA refers to paragraph 176 of the NPPF and that the scale and extent of development within protected landscapes such as National Parks should be limited. The NPPF does not define what 'limited' means in that context nor does the Local Plan. Given that paragraph 176 would be applicable to all of the National Parks, the NPPF makes it clear that for the purposes of paragraphs 176 and 177 it is a matter for the decision maker to determine. The North York Moors Local Plan does not define 'limited development' but instead uses another form of words in paragraph 3.3 of the Local Plan - that of 'small in scale' and uses that term throughout a number of its policies - but does not define it numerically.

LPA Reason for refusal 5

3.22 The LPA has not offered any evidence or justification for the use of this reason for refusal in its statement. In fact the statement does not address or discuss this reason for refusal at all. The appellants have stated in their statement of case that each application should be considered on its own merits and also referred to the parts of the Local Plan where this is clearly set out.

3.23 Part of an appeal decision issued on 13th December 2022, after this appeal had been lodged is helpful in this respect. The appellant was the Mulgrave Estate and the LPA was NYMNPA and the application was at Cross Farm Barns, Egton (APP/W9500/W/22/3304496) . The LPA had used the same reason for refusal in that application.

3.24 The Inspector, C Megginson, stated in their report at paragraph 12 as follows:

"12. The Council have stated, in summary, that if approved, the proposal would make it increasingly difficult to resist future applications for new housing on inappropriate sites which would cumulatively pose a major threat to the character, special qualities and distinctiveness of the more rural settlements of the National Park. I have no evidence to suggest that there is a

reasonable prospect of similar development being repeated nearby and even if this was the case, each case would be considered on its own merits”.

3.25 The LPA have not provided any evidence to support this reason for refusal and therefore the position is the same as that for the above appeal.

LPA proposed Conditions.

3.26 The LPA proposes a number of conditions should the Inspector be minded to uphold the appeal. The proposed conditions appear to be on the whole, sensible conditions with the possible exception of condition 14 for the reasons outlined earlier. The application proposes that the residential development be principal residence housing and therefore this would be consistent with condition 3.

3.27 Should the Inspector be minded to allow the appeal, the Appellants confirm that they are content with the LPAs suggested conditions notwithstanding the comments made on Condition 14, and would be content with any further conditions the Inspector deemed necessary to mitigate any potential scheme impacts not covered by the LPAs conditions.