



Appeal Decision

Site visit made on 9 February 2021

by **Stephen Wilkinson BA (Hons) BPI DIP LA MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 April 2021

Appeal Ref: APP/V2255/W/20/3254725

Car showroom, London Road, Upchurch, Sittingbourne, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Christine Adeosun against the decision of Swale Borough Council.
 - The application Ref 19/504657/FUL, dated 15 September 2019, was refused by notice dated 14 February 2020.
 - The development proposed is change of use of auto showroom and workshop (Sui generis) to a banqueting hall, including food and processing and distribution (Class D2 and B2) alterations to fenestration.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of auto showroom and workshop (Sui generis) to a banqueting hall, including food and processing and distribution (Class D2 and B2), alterations to fenestration at car showroom, London Road, Upchurch, Sittingbourne, Kent in accordance with the terms of the application, Ref 19/504657/FUL, dated 15 September 2019, and the plans and documents submitted with it including those submitted with this appeal, subject to the conditions included in the schedule attached to this decision.

Procedural Matters

2. Although the definition of the uses has changed¹ since the appeal was originally lodged it is not open to me to change these references to the proposed uses applied for.

Main Issues

3. The proposal has 2 main issues:
 - Whether or not there is sufficient parking to serve the proposed development, and
 - The effect of vehicle movements on the living conditions of neighbouring residential occupiers.

Reasons

Parking provision

¹ Town and Country (Use Classes) (England) (Amendment) Regulations 2020

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4. The appeal site lies on London Road (the A2) just south of Upchurch. It has been vacant for over 7 years having been previously occupied as a car showroom with workshops to the rear. There are large areas of hardstanding to the front, rear and side of the building. The site shares an access with another car dealer and workshop and on the east of the site one of a pair of bungalows, 'Muriel'.
5. The proposed conversion of the scheme includes 53 parking spaces along with a coach parking bay to the front and rear of the site. The provision of this amount of car parking accords with the County Council's adopted parking standards for the proposed scheme on the assumption that the venue would have a maximum capacity of 300 persons. This number has been confirmed by the appellants and is critical to my decision.
6. The crux of the Council's objection to the proposal is based on the difficulties of enforcing a planning condition which could restrict the maximum number of guests at the site at any time to 300 to ensure that parking at the site would adequately cover the anticipated demand.
7. Since the Council determined the application it has adopted a new set of parking standards which differ from those adopted by the County. Accordingly, the proposed use as a venue with a maximum of 300 visitors would require 121 spaces leading to a shortfall of 68 spaces overall.
8. Although the proposed use would be used for food processing and distribution the dispute between the parties is focused on its use as a banqueting hall.
9. The banqueting hall use would not be open to the public but would require pre booking. In this respect, parking demand would be reliant on the time of events. For example, a wedding reception is unlikely to result in a staggered number of trips leading up to the reception and towards the end. It is likely that visitors will all arrive/leave within a narrow period of time. This can be compared to the regular distribution of vehicle trips generated by a car showroom as demonstrated by the appellant's transport evidence.
10. The appellant has refined the original data sets for trip generation from those submitted with the application with additional research. This identifies that the difference in the parking requirement between the appeal scheme and the use of the site as a car showroom would only be marginally more.
11. These figures do not actually address the full pattern of movements at the site which would operate beyond midnight. However, it is likely that people would be more likely to leave the site in the early hours than arrive and for this reason, I consider that they present a reasonably accurate forecast of parking demand.
12. From the survey results it is clear that without some form of mitigation parking demand would exceed the proposed supply of spaces at the site. I do not agree with the appellants that in the event of excessive demand, drivers would either act in a rational way in seeking parking spaces beyond the appeal site² or seek alternative venues. For example, drivers often park as close as possible to venues in a way which may safeguard their car but at the expense of the safety of other highway users. Furthermore, alternative venues would not be 'alternatives' as in the case of pre-booked events, for example, a wedding.

² Paragraphs 7.3.4-7.3.5 Appellants Transport evidence

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13. However, I recognise that the parking standards have changed since the Council's original decision which have to some extent shifted the substance of its objections to the appeal scheme from one related to an inoperable condition to the scheme's failure against standards.
14. I have considered the appellant's suggestion for an event management plan. This would be required to limit the numbers of people travelling to the site by car through modal shift. In normal circumstances, with the limited bus services which could act as an alternative, an event management plan would not be an effective solution for this site. However, the appellant has stated that a coach and minibus service could be provided operating to pick up people from rail stations.
15. As the operation of the banqueting function would be pre-booked and the appellant have indicated that they would adhere to a maximum of 300 guests this is a viable alternative allowing for a reduction in demand for parking spaces at the site.
16. Underpinning policies CP4, DM7 and DM14 of the Local Plan³ are various requirements for development to respect safety and accessibility, adherence to the Swale Borough Parking Standards and respect the character of the local area.
17. The adoption of an event management plan as suggested by the appellant could reduce private transport and would be consistent with the essential thrust of adopted policies.
18. For these reasons, and subject to the imposition of a planning condition requiring an event management plan being approved in advance of development proceeding, I conclude that the proposal would not be in conflict with Policies CP4, DM7 and DM14 of the Local Plan 2017.

Living conditions on surrounding residential occupiers

19. For the purposes of the noise surveys submitted with the appeal the appellant has identified the bungalows, and in particular, 'Muriel' on the site's eastern boundary as the most sensitive noise receptors.
20. The receptor site has been subject to varying levels of noise disturbance from the operation of the car dealership and it continues to experience high level of disturbance from the heavy volumes of traffic using London Road, the A2.
21. However, the critical difference between the impacts of the former use and that proposed, are the hours of operation which for the appeal site would extend from 08:00-01:00 Monday – Friday and 08:00-3:00 Friday and Saturdays. These hours would extend the potential for significant disturbance to the receptor site in addition to that experienced from noise generated by traffic.
22. The appellant's surveys demonstrate that against a range of measures the levels of noise generated by traffic using the site from the proposed use would be minimal but only if an acoustic barrier of appropriate standards was placed for the length of the site boundary. This would have the effect of actually reducing the background noise levels generated by the proposed use and from

³ Bearing Fruits 2031: the Swale Borough Local Plan

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traffic using the road. This would reduce noise experienced at this property to levels within WHO⁴ guidelines.

23. Furthermore, the appellant has indicated a range of mitigation measures designed to address noise being derived from other sources from within the appeal site including plant, leakage of amplified music through openings, the smoking area and anti-social behaviour around the venue. These matters could largely be controlled through planning conditions.
24. A common thread running through Policies ST1 and DM14 of the Local Plan seeks to ensure that adherence to the principles of sustainable development to ensure development does not adversely impact on living conditions.
25. The proposals would result in an improved level of amenity from the operation of this site through the insertion of an acoustic barrier which would reduce the adverse impacts of noise from not just the proposed use but from the heavy volumes of traffic on the London Road. For these reasons, I do not consider that the proposal would conflict with Policies ST1 and DM14 of the Local Plan.

Interested parties

26. Objections have been raised to the appeal scheme on several grounds. I acknowledge that the proposal has the potential to result in additional traffic on local roads which already carry high volumes. However, most events are likely to occur outside normal working hours when volumes would be lower. The purpose of the event management plan is designed to reduce reliance on private transport through the operation of a coach and minibus service. This would ensure that even with the site's poor public transport it could function without unacceptable detriment to the local road system and in part protect air quality.

Conclusions

27. This is a finely balanced appeal, but would result in the re use of an existing building in line with the National Planning Policy Framework's requirements to encourage the re use of land.
28. The harms which could arise in respect of traffic generation and noise, could be adequately addressed through pre commencement conditions. For these reasons the appeal is allowed.

Conditions

29. I have imposed conditions in respect of the approved plans for reasons of certainty. I consider that several of the conditions suggested by the Council's Environmental Health team could be enforceable and for this reason have imposed them as measures essential to reduce the transfer of noise. For the other suggested conditions, I accept the Council's views on their limitations in respect of Planning Practice Guidance.
30. In respect of the suggested acoustic screen, I have imposed a pre commencement condition to limit potential noise impacts. For this to be fully effective the screen would have to extend the full length of this boundary. This would impact on the access to 'Muriel' and would need to be secured through negotiation.

⁴ World Health Organisation

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31. To reduce the impacts of the proposal on surrounding residential occupiers I have imposed conditions in respect of construction times and the proposed hours of use.
32. I have imposed several conditions to reduce reliance on private transport. These include the provision of cycle spaces and a staff travel plan. I have revised the appellant's suggested condition for an event management plan following comments by the Council, to ensure it is more comprehensive in scope and links directly to the maximum number of attendees. The event management plan could draw in part on the submitted draft crowd/noise control plan for the management of the site during events. It is predicated on all events being pre-booked as stated by the appellant. The event management plan should address what measures are required for events of different size, for example, 0-100, 101-200 and 201-300 visitors.
33. I have suggested conditions regarding the retention of parking and servicing areas being kept free from development so as to ensure the free flow of vehicles around the site. Other conditions require measures in respect of land contamination given the past use of the site.
34. Finally, a series of conditions in respect of landscaping are also suggested to enhance the character and appearance of the site.

Stephen Wilkinson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, 6.12.19; Existing site plan A02-LR-001; Existing elevations A01-LR-03; Existing floor plans A01-LR-02; Proposed elevations A01-LR-06C; Proposed site plan; A01-LR-04D, Proposed floor plans A01-LR-05D; Proposed seating plan A01-LR-07; Ducting plan by canopyUK.com; technical specifications by Canopyk.com and Acoustic fence details 06/J7/01043.
- 3) The area shown on the submitted plan as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re enacting that Order or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the use of the site commencing.
- 4) The area shown on the submitted plan as vehicle loading/unloading and turning facilities shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re enacting that Order or not shall be carried out on the land so shown or in such a position as to preclude vehicle access thereto; such land and access thereto shall be provided prior to the use of the site commencing.
- 5) The area shown on the submitted plan as cycle parking facilities shall be provided on site prior to the use commencing and shall be retained permanently.
- 6) All events held at the venue are required to be pre-booked.
- 7) Prior to the use of the site commencing, an event management plan, predicated on a maximum of 300 persons attending the site at any time, shall be submitted to and approved in writing by the local planning authority in consultation with the County Highway Authority. This plan shall include details of where users of the venue will be picked up/dropped off in the wider area, identification of set down areas within the site for taxis and coaches/minibuses and measures required to manage users travel, including the control of parking when events are taking place. The operator of the venue shall appoint a nominated officer to manage each event. The use of the premises for events shall proceed wholly in accordance with the approved plan.
- 8) The electric vehicle charging facilities shown on the submitted plans shall be provided on site prior to the use of the site commencing and shall be retained permanently.
- 9) Prior to the use of the site commencing a detailed staff travel plan must be submitted to and agreed in writing by the local planning authority in conjunction with Kent County Council highways.

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- 10) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include existing trees, shrubs and other features, planting schedules of plants requiring only native species of a type that will encourage wildlife and biodiversity, plant sizes and numbers where appropriate, means of enclosure, hard surface materials and an implementation programme.
- 11) All hard and soft landscape works shall be carried out in accordance with the approved details. The work shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority.
- 12) Upon completion of the approved landscaping scheme any trees or shrubs that are removed, or dying or severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the local planning authority and within whatever planting season is agreed.
- 13) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 14) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out [and upon completion a verification report by a suitably qualified

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- contaminated land practitioner shall be submitted to and approved in writing by the local planning authority] before the development [or relevant phase of development] is occupied.
- 15) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development] is resumed or continued.
 - 16) The construction work in connection with the development shall not take place on any Sunday or bank holiday nor on any other day except between the following times:
Monday to Friday 08:00 -18:00hours, Saturdays 08:00-13:00 hours, unless required by an emergency or with the prior written approval of the local planning authority.
 - 17) Prior to the commencement of the developments hereby approved details of the scheme for increased sound proofing to the east facing facade wall of the building shall be submitted to and approved in writing by the local planning authority. The approved scheme of sound proofing shall be installed prior to the first use of the premises and thereafter be retained in compliance with the approved scheme.
 - 18) A double door lobby system shall be installed on the main entrances and exits to the building and all doors and frames leading to external areas including fire exits shall be constructed to achieve a minimum sound reduction index of 37.0dBRw.
 - 19) Prior to first use of the premises hereby approved a 2.5m high close boarded acoustic timber fence with a minimum density of 10kg/sm shall be installed for the full length of the site's eastern perimeter boundary adjacent to the property, 'Muriel', London Road, Upchurch and permanently retained.
 - 20) The use of the premise hereby permitted, shall be restricted to the hours 08:00am – 1.00am on Sunday to Thursday and 08:00am – 3.00am on Friday to Saturdays.