

Appeal Decision

Site visit made on 23 September 2016

by **R J Maile BSc FRICS**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 October 2016

Appeal Ref: APP/Z5630/W/16/3153052

Maypole Motors, Vale Road South, Surbiton, Surrey, KT6 5AQ.

- 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 Mr Darryl Flay against the decision of the Council of the Royal Borough of Kingston upon Thames.
 - The application ref: 15/10338/FUL, dated 7 October 2015, was refused by notice dated 9 February 2016.
 - The development proposed is: Demolition of existing buildings and erection of 9 residential units with associated parking, landscaping and amenity space.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and erection of 9 residential units with associated parking, landscaping and amenity space at Maypole Motors, Vale Road South, Surbiton, Surrey, KT6 5AQ, in accordance with the terms of the application ref: 15/10338/FUL, dated 7 October 2015, subject to the conditions set out in Annex A to this decision.

Main Issues

2. The main issues in this case are:
 - a) The impact of the increase in vehicular and pedestrian usage of Vale Road North upon highway safety and the free flow of traffic.
 - b) Whether the loss of this site for employment use should be resisted.

Reasons

- a) *Impact upon highway safety.*
3. The appeal site comprises the current Maypole Coachworks, which is in use for motor vehicle repairs. That business also operates a 24 hour vehicle recovery service. The surrounding uses are wholly residential in nature, including some recently erected houses in Sunningdale Close.
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4. The principal means of access to the site would be via Vale Road South, which street currently provides access both to the appeal site and modern residential development in Arklow Mews. There is also a secondary means of access to the site from Vale Road North, but this has a very restricted carriageway width and a footpath running along the south side.
5. Vale Road North serves as the sole means of access to some eleven Victorian terraced and semi-detached houses, none of which have on-site parking. As a result, residents' cars are parked with two wheels on the pavement. There are no turning facilities within the street, such that vehicles reverse into Hook Road, which is a classified highway (A243) and 'bus route. There is signage on the access to Vale Road North from Hook Road indicating its unsuitability for commercial vehicles.
6. Upon receipt of the application the Council consulted with its Highways Officer, who raised no objections to the proposal. He also confirmed that the proposed parking arrangements would meet the Council's standards.
7. An earlier planning application (ref: 13/10245/FUL) was withdrawn following discussions with the Case Officer. The application the subject of this appeal took account of those discussions and was recommended for approval in the Officer's Report, subject to conditions. Nevertheless, following the objections received from nearby residents concerning the suitability of Vale Road North to accommodate additional traffic, the Committee resolved to refuse planning permission upon highway safety grounds.
8. The sole means of access to Units 1 to 5 (a detached house and two pairs of semi-detached houses) would be from Vale Road South. However, Units 6 to 9 (a block of two 3 bedroom and two 2 bedroom maisonettes) would rely upon access from Vale Road North.
9. As part of the access proposals for Units 6 to 9 a new turning area would be provided within the site. I have received a section 106 Unilateral Undertaking dated 1 September 2016 in which the owner covenants to allow the public full access to this facility by motor vehicles. The Undertaking also covenants to enter into a highway agreement under section 38 of the Highways Act 1980 for the dedication and adoption of the turning head as a public highway if requested by the Council.
10. In their final statement the agents acting on behalf of the appellant stated that, if considered necessary, the appellant would accept a condition requiring the submission of a Service and Delivery Management Plan to ensure satisfactory management of larger service and delivery vehicles via Vale Road South.
11. Following the site visit the appellant's agents were requested to submit the wording of any such condition for consideration. This was provided by email dated 5 October 2016 and copied to the Council. The Council has confirmed that it has no further comments to make upon the suggested condition.
12. From the information before me I am satisfied that the restricted turning head to be provided at the extremity of Vale Road North is suitable for cars and light vans. This is demonstrated by the swept path analysis for the turning head prepared by the appellant's highway engineers, Peter Brett Associates.

13. The existing signage upon the Hook Road junction to Vale Road North, which discourages use of the road by HGVs, together with the Unilateral Undertaking dated 1 September 2016, are both highly relevant to my decision to allow this appeal. I have also been influenced by the fact that only a minor increase in vehicle and pedestrian movements would result from Units 6 to 9 and that the Council's Highways Officer raised no objections to the proposal upon highway grounds.
14. I can appreciate the understandable concerns of nearby residents in Vale Road North. Nevertheless, given the evidence before me and subject to a condition requiring the submission of a detailed Service and Delivery Management Plan, I find upon the first main issue that development as proposed would not give rise to an unacceptable increase in vehicle and pedestrian use of Vale Road North to the detriment of highway safety or the free flow of traffic, as required by Policy DM 9 of the adopted Core Strategy¹.

b) Loss of site for employment use.

15. The Council has raised concerns regarding the loss of this site for employment purposes contrary to Policy DM 17 (Protecting existing employment land and premises) of the Core Strategy. I note the Council's reservations concerning the marketing of this site for commercial use and the conflicting evidence in this regard.
16. The appeal site is wholly surrounded by residential development. Both Vale Road North and Vale Road South pass close to existing houses. Having regard to its proximity to residential development and the constrained means of access it is not a particularly attractive site for continued employment use. My attention has also been directed to Core Strategy Policy CS 10, which sets out the Council's desire to take full advantage of opportunities to deliver new housing.
17. In the light of these facts I have found upon the second main issue, given the need for additional housing within the Borough and having regard to national policy at paragraph 51 of the Framework², that the loss of this poorly located employment use should not be resisted.

Section 106 Unilateral Undertaking

18. I have been provided with a Unilateral Undertaking dated 1 September 2016. This covenants to provide: firstly, four of the units as affordable housing; and secondly, to allow the public full access by motor vehicles to use the turning head at the eastern end of Vale Road North for the purposes of turning motor vehicles at all times.
19. Amongst other matters, the operative provisions of the Unilateral Undertaking provide that each clause, sub-paragraph and schedule shall be separate, distinct and severable. In the subject case, therefore, only the covenant to allow the public access by motor vehicles to the turning head would become operative.

¹ The Royal Borough of Kingston upon Thames Local Development Framework: Core Strategy (April 2012).

² The National Planning Policy Framework.

20. This follows the decision in the Court of Appeal issued on 11 May 2016 that the Written Ministerial Statement of 28 November 2014 ('the WMS') is a material consideration. The WMS states that:

'... for sites of 10-units or less, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought.'

21. The scheme before me is for nine residential units with a total gross internal floorspace of 967 m². Consequently, both in terms of numbers of units and the amount of floorspace achieved, the proposal would fall within the ambit of national policy as expressed in the WMS and set out at paragraph 31 of the Government's Planning Practice Guidance.
22. As a result, and given the severability of the affordable housing contribution, I am satisfied that the Unilateral Undertaking as it applies to the public's access by motor vehicles to the turning head at the eastern end of Vale Road North is necessary to make the development acceptable in planning terms, is directly related to the development and that it is fairly and reasonably related in scale and kind to it. As such, the Unilateral Undertaking meets the tests set out at paragraph 204 of the Framework and I have therefore taken it into account in my determination of this appeal.

Conditions

23. I have considered the 15 conditions put forward by the Council against the tests of the Framework and advice provided by the Government's Planning Practice Guidance issued on 6 March 2014. All are reasonable and necessary in the circumstances of this case although I have amended their wording where required, or have combined or separated others, in the interests of clarity. I have also imposed a further condition, as discussed at paragraph 10 above.
24. My reasons for the conditions are:
25. Condition 1 is the standard commencement condition imposed in accordance with section 91(1) (a) of the Town and Country Planning Act 1990. Conditions 2, 3, 4, 5, 6 and 14 are necessary to ensure a satisfactory appearance to the completed development in the interests of the visual amenities of the area, while Conditions 7 and 8 are designed to protect the privacy and amenities of adjoining occupiers, maintain adequate amenity space to serve the dwellings and to safeguard the cohesive appearance of the development.
26. Condition 9 is imposed in the interests of sustainability. Conditions 10, 11, 12 and 13 are necessary to secure the provision of adequate off-street car parking facilities, to ensure that the development shall not prejudice highway safety or the free flow of traffic and to safeguard the amenities of surrounding residential occupiers during construction works.
27. Condition 15 secures the provision of adequate on-site cycle parking to serve the development in the interests of sustainability and the provision of facilities for the storage of refuse and recycling generated by the development in the interests of the amenities of the area.

28. Condition 16 is necessary to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors.

29. As to Condition 17, which requires that the development shall be carried out in accordance with the approved plans, this provides certainty.

Conclusion

30. For the reasons given above, I conclude that the appeal should be allowed.

R. J. Maile

INSPECTOR

Schedule of Conditions

Annex A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until full details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until full details of a scheme of hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include hard surfacing materials and the means of enclosure to the site and to the individual plots. Details of soft landscape works shall include a plan indicating all existing trees on the land and details of those to be retained, planting plans, schedules of plants noting species, plant sizes and proposed numbers/densities, where appropriate, and an implementation programme.
- 4) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written approval to any variation.
- 5) No development shall take place until a detailed arboricultural method statement and tree protection plan, which shall be prepared in accordance with the requirements of BS 5837:2012 'Trees in relation to design, demolition and construction – Recommendations' have been submitted to and approved in writing by the Local Planning Authority; and this information shall include:
 - (a) A plan indicating the positions, crown spreads and root protection areas (RPA's) of every retained tree on the site and on nearby ground or land adjacent to the site in relation to the approved plans.
 - (b) A schedule of pre-construction tree works to any retained trees, where appropriate.
 - (c) Details and positions of tree protection barriers and ground protection, where appropriate.
 - (d) Details and positions of construction exclusion zones.
 - (e) Details and positions of existing and proposed underground service runs, to be routed to avoid root protection zones where possible.
 - (f) Details and positions of any change in levels or the positions of any excavations within 5m of the root protection areas of retained trees.
 - (g) Details of any special engineering works required to accommodate the protection of retained trees (e.g. in connection with foundations, service installation, bridging water features or surfacing).
 - (h) The working methods to be employed in relation to the the installation of drives and paths within the RPA's of retained trees in accordance with the principles of 'No Dig' construction.

- 6) The tree protection measures shall be implemented in accordance with the approved details before any equipment, machinery or materials are brought on to the site for the purposes of the development and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the Local Planning Authority.
- 7) Notwithstanding the provisions of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) no extensions or alterations shall be made to the dwellinghouses hereby permitted, nor shall any buildings be erected within their curtilages, without the prior approval in writing of the Local Planning Authority.
- 8) Before first occupation of the development hereby permitted the first floor flank windows to the bathrooms of Plot 1 and the flank kitchen and bathroom windows of Plots 8 and 9 shall be obscure glazed to a minimum of Level 3 on the Pilkington scale, shall be non-opening below 1.7m above finished floor level and permanently retained in that condition.
- 9) The dwellings hereby permitted shall not be occupied until evidence has been submitted to the Local Planning Authority demonstrating that the development has achieved not less than the CO₂ reductions (Ene1) and internal water usage (Wat1) standards equivalent to Level 4 of the Code for Sustainable Homes. Unless otherwise agreed in writing, evidence to demonstrate a 19% reduction compared to 2013 Part L Regulations and internal water usage rates of 105l/p/day shall be submitted to and approved in writing by the Local Planning Authority.
- 10) No part of the development shall be occupied until the car parking and vehicle turning areas indicated on the approved plans have been drained, surfaced and laid out in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority; and those areas shall not thereafter be used for any purpose other than the parking and turning of vehicles.
- 11) No development shall take place until full details of the demarcation of the carriageway/turning circle together with signage to indicate that the parking bays are private shall be submitted to and approved in writing by the Local Planning Authority. The demarcation of the carriageway/turning circle and signage shall be provided in accordance with the approved details before any part of the development hereby permitted is first occupied and thereafter permanently retained.
- 12) Prior to the first occupation of the development hereby permitted there shall be submitted to and approved in writing by the Local Planning Authority a Service and Delivery Management Plan detailing how access by larger service and delivery vehicles will be managed. The approved Service and Delivery Management Plan shall be implemented upon first occupation of any part of the development and permanently adhered to thereafter.

- 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide for:
- (a) Loading and unloading of plant and materials;
 - (b) Storage of plant and materials used in constructing the development;
 - (c) The parking of vehicles of site operatives and visitors;
 - (d) Temporary site access and location of all ancillary site buildings;
 - (e) Signing system for works traffic;
 - (f) Measures for the laying of dust, suppression of noise and abatement of other nuisance arising from development works;
 - (g) Wheel washing facilities;
 - (h) The erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate.
- 14) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the dwellings hereby permitted and the finished levels of roads, parking areas and pathways within the site in relation to existing ground levels have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 15) No development shall take place until full details of the provision of secure, covered cycle parking and refuse/recycling storage facilities to serve the development have been submitted to and approved in writing by the Local Planning Authority. The cycle parking and refuse/recycling storage facilities shall be provided in accordance with the approved details before the development hereby permitted is first occupied and thereafter permanently retained as such.
- 16) No development shall take place until an assessment of the risks posed by any contamination, which shall be carried out in accordance with 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 the equivalent British Standard and Model Procedures if replaced) has been submitted to and approved in writing by the Local Planning Authority.

If any contamination is found a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority.

If during the course of development any contamination is found which has not been previously identified work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and following their completion a verification report for all of the remediation works shall be submitted to and approved in writing by the Local Planning Authority.

- 17) The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing no.

FD14-1236-710:	3D Views.
FD14-1236-50:	Site Location Plan – scale 1:1250.
FD14-1236-51:	Existing Site Plan – scale 1:500.
FD14-1236-53:	Building and Tree Removal Plan – scale 1:500.
FD14-1236-54 Rev A:	Flood Risk Plan – scale 1:1250.
FD14-1236-170-SK:	Bin and Cycle Store Proposed Plans and Elevations – scale 1:100.
FD14-1236-101:	Plot 1 Proposed Roof Plan – scale 1:100.
FD14-1236-110:	Plot 1 Proposed Front and Left Flank Elevations – scale 1:100.
FD14-1236-111:	Plot 1 Proposed Rear and Right Flank Elevations – scale 1:100.
FD14-1236-120:	Plots 2-5 Proposed Ground and First Floor Plans – scale 1:100.
FD14-1236-121:	Plots 2-5 Proposed Second Floor and Roof Plans – scale 1:100.
FD14-1236-130:	Plots 2-5 Proposed Front and Left Flank Elevations – scale 1:100.
FD14-1236-131:	Plots 2-5 Proposed Rear and Right Flank Elevations – scale 1:100.
FD14-1236-140:	Plots 6-9 Proposed Ground Floor Plans – scale 1:100.
FD14-1236-141:	Plots 6-9 Proposed First Floor Plans – scale 1:100.
FD14-1236-142:	Plots 6-9 Proposed Roof Plan – scale 1:100.
FD14-1236-150:	Plots 6-9 Proposed Front and Left Flank Elevations – scale 1:100.
FD14-1236-151:	Plots 6-9 Proposed Rear and Right Flank Elevations – scale 1:100.
FD14-1236-55 Rev D:	Proposed Site Plan – scale 1:500.
FD14-1236-56 Rev D:	External Works Plan – scale 1:500.
FD14-1236-57 Rev D:	Site Plan Showing Key Amendments – scale 1:500.
FD14-1236-160 Rev A:	Individual Bin and Cycle Store Proposed Plans and Elevations – scale 1:100.
FD14-1236-700 Rev D:	Proposed Sections – various scales.
FD14-1236-52 Rev B:	Existing Sections – various scales.
FD14-1236-58:	Existing Elevation – scale 1:100.
FD14-1236-705 Rev D:	Existing and Proposed Street Scenes – various scales.
FD14-1236-100 Rev C:	Plot 1 Proposed Floor Plans and Elevations – scale 1:100.