
Appeal Decision

Site visit made on 17 January 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 27 January 2017

Appeal Ref: APP/P3610/W/16/3157248
101b East Street, Epsom KT17 1EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Wilsons Automobiles Ltd against the decision of Epsom & Ewell Borough Council.
 - The application Ref 16/00361/REM, dated 2 June 2016, was refused by notice dated 18 July 2016.
 - The application sought planning permission for the demolition of existing car showroom and first floor flat and replacement with new car showroom and associated works without complying with a condition attached to planning permission Ref 15/01663/FUL, dated 12 April 2016.
 - The condition in dispute is No 10 which states that: No staff or customers shall park at the site. All display vehicles shall be displayed within the showroom. The forecourt shall not be used for the display of vehicles or for any storage purpose in association with the use of the showroom.
 - The reasons given for the condition are: To ensure that the development does not prejudice highway safety or cause inconvenience to other highway users, and in the interests of visual amenity, in accordance with Policies CS5 and CS16 of the Core Strategy (2007).
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing car showroom and first floor flat and replacement with new car showroom and associated works at 101b East Street, Epsom KT17 1EA, in accordance with the application Ref 16/00361/REM dated 2 June 2016, without compliance with condition No 10 previously imposed on planning permission Ref 15/01663/FUL dated 12 April 2016, and subject to the conditions set out in the attached schedule.

Background and Main Issues

2. Planning permission was granted for a new car showroom on the corner of East Street and Kiln Lane, which has not been implemented. The appellant raises no objection to the intention of the first part of condition No 10 which is to preclude the use of the forecourt for parking by staff and customers, which given the proximity of the site access to the major junction and the volume of traffic around it, would be necessary and reasonable. He does, however, object to the second part of the condition, which prevents the display on the forecourt of vehicles and storage in association with the use of the showroom. The main issues are therefore whether the part of condition No 10 which
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prevents the display on the forecourt of vehicles and storage in association with the use of the showroom is necessary and reasonable having regard to:

- highway safety and the convenience of highway users, and
- the character and appearance of the area.

Reasons

Highway safety and the convenience of highway users

3. The Council has given permission for the access off Kiln Lane which would be used to bring display cars across the relatively narrow, open forecourt and into and out of the showrooms on the ground and first floors of the building.
4. There is no doubt that the proposal to display cars on the forecourt would add to the challenge of manoeuvring cars into and out of the showrooms. However, the submitted swept path analysis demonstrates that there is sufficient space within the showrooms and the forecourt to manoeuvre medium size cars onto the forecourt, without needing to manoeuvre within the highway. If car access were required to the showrooms after cars were displayed on the forecourt, it would not be unreasonable in a site for car sales, for any display cars on the forecourt to be driven away and returned later. This would not prejudice highway safety. Given the limited number of cars possible to be displayed on the forecourt, the additional trips would not inconvenience highway users.
5. The swept path analysis demonstrates that for cars to park on the forecourt they would not need to overhang the footway; they would anyway be constrained by a low, brick planter with shrubs, along much of the forecourt perimeter. Whilst the appellant has not indicated where in the forecourt the display cars would be parked, or their number, insufficient pedestrian access to the building across the forecourt would defeat the purpose of the show rooms. There is no evidence that both the display of cars and access for pedestrians could not be provided satisfactorily at the same time. I therefore consider the risk of unsafe and unsuitable pedestrian access for all being provided to be very low.
6. I conclude on this issue that the development without the second part of condition No 10 would not prejudice highway safety or inconvenience highway users. There would be no conflict with Policy CS16 of the Core Strategy 2007 which seeks development that ensures that the safety, convenience and free flow of traffic is not adversely affected, and provides safe, convenient and attractive accesses for all. Nor, with regard to paragraph 32 of the National Planning Policy Framework (the Framework), would any residual cumulative impacts resulting from the development be severe.

Character and appearance of the area

7. The site is enclosed to one side by East Street, a relatively busy multi-lane road, and to the other, by Kiln Lane, a less busy road which contains four lanes of traffic. The Council is concerned that parking cars on the forecourt for display on this prominent corner plot would result in paraphernalia and visual clutter.

8. My impression of the site is that its character is determined as much by the volume and movement of traffic alongside it as other factors like the movement of people, light, the appearance of buildings, their frontages, and any displays on any forecourts. In this setting, the site presently displays cars for sale in a forecourt far greater than the area in the approved scheme. Furthermore, I saw other car sales businesses with displays alongside the footway on East Street within two hundred metres or so of the appeal site. This suggests that the forecourt display of cars for sale is not uncharacteristic of the area. Notwithstanding this context, given the limited area of forecourt in this scheme, and the spacing from neighbouring forecourt displays, using this forecourt for the display of vehicles would not result in a harmful proliferation of forecourt displays.
9. I noted a car repair centre opposite the site, which has forecourt parking, and there is a small car-park visible alongside the King's Arms public house further along East Street. The parking of what the appellant suggests would be 3 to 5 cars in the forecourt of the proposed building would appear limited in comparison to other forecourts in the area, and would not appear out of character.
10. The forecourt display would not be seen in isolation. The cars would stand immediately in front of a new building containing sales showrooms over two floors, which would relate the forecourt cars directly to the use of the building. The forecourt would have two principal aspects; to Kiln Lane and to East Street. In views from one direction on East Street, the forecourt would be largely obscured by the building. In other views, most of the forecourt would be enclosed by low level planting which would act as a softening layer between the cars and the street. This would diminish any effect of clutter and contain the spread of any paraphernalia. For these reasons, I find the adjusted condition would not result in a development which harms the character and appearance of the area.
11. The Council challenges the need for a forecourt display, suggesting that passing trade would not be affected by an unoccupied forecourt as cars displayed in the showrooms would be visible through the large openings. However, the appellant has stated that the restriction on a forecourt display area would impact negatively on sales. I recognise the importance of display cars attracting passing trade and the importance of a forecourt display in front of a car sales showroom. In this light, I attach significant weight to the Framework which says in paragraph 19 that planning should operate to encourage and not act as an impediment to sustainable growth.
12. I appreciate the concerns of the Council over the visual environment and the display of vehicles for sale, and I note the visual benefits which the approved scheme would bring. However, for the reasons above, the deletion of the second part of condition No 10 would not result in harm to the character and appearance of the area. The development would accord with Policy CS5 of the Core Strategy 2007 and Policy DM9 of the Development Management Policies Document 2015. These seek development of high quality design, which creates attractive public and private environments and which makes a positive contribution to the Borough's visual character and appearance.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed. I have altered the non-contentious part of the condition to make it comply with the tests in the Framework, and, in accordance with Section 73(2)(a) of the Act, I have granted a new planning permission with a modified condition No 10, while retaining the non-disputed conditions from the original permission.
14. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I have imposed all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
15. It should be noted that in accordance with Section 73(5) the time limit for the commencement of the development specified in the original planning permission still applies. Therefore, the development permitted by my decision on this appeal must be commenced within three years of the date of the original planning permission, Ref 15/01663/FUL, which was granted on 12 April 2016.

Patrick Whelan

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin within 3 years of 12 April 2016.
- 2) The development hereby permitted shall be constructed entirely of the materials as detailed on the schedule of materials on the planning application form and in the Design and Access Statement, dated February 2016.
- 3) Prior to the commencement of development detailed drawings to indicate the exact slab levels of the development and the levels of the site and the development in relation to the levels of the existing and adjoining land, buildings and highways shall be submitted and approved in writing by the local planning authority. All levels shall be in metric terms and related to Ordnance Survey Datum. Thereafter the development shall be constructed in accordance with the approved details.
- 4) Prior to the commencement of the development a comprehensive and detailed hard and soft landscaping scheme, including boundary treatment shall be submitted to and approved in writing by the local planning authority. The landscape works shall be implemented prior to occupation of any part of the development, or within an alternative timescale to be first agreed in writing by the local planning authority. Thereafter, the landscaped areas shall be retained and they shall be cultivated and maintained for a period of 5 years from the date of implementation and any plant failures within that five year period shall be replaced, within the next planting or seeding season, as per the original landscaping scheme unless otherwise agreed in writing by the local planning authority.
- 5) Details of all proposed signage shall be submitted to and approved in writing with the local planning authority prior to the use of the development hereby permitted. Submitted details shall include location, scale, use of materials, any illumination, and any projection from the building. The development shall accord with the approved details and thereafter retained in that condition.
- 6) The pedestrian footpath adjacent to the site shall be increased to a width of 3.0m as per the approved Drawing Number 6517-P03 Rev A.
- 7) The development hereby approved shall not be first used for trading until the proposed vehicular access to Kiln Lane has been constructed in accordance with the approved plans. The access shall be permanently maintained to this specification and the visibility zones shall be kept permanently clear of any obstruction.
- 8) The means of access to the development shall be from Kiln Lane only. There shall be no means of vehicular access from East Street. The existing access/es from the site to East Street shall be permanently closed and any kerbs, verge or footway, fully reinstated by the applicant, in a manner to be agreed in writing with the local planning authority. The premises, the subject of this application, shall not be occupied or used for trading until a permanently maintained physical barrier fronting East Street has been erected to prevent the formation of unauthorised access to that road in accordance with a scheme to be submitted to and approved in writing with the local planning authority. The barrier shall thereafter be retained in situ.

- 9) No development shall commence on site until a Method of Construction Statement, to include details of:
 - a) parking for vehicles of site personnel, operatives and visitors
 - b) loading and unloading of plant and materials
 - c) storage of plant and materials
 - d) programme of works (including measures for traffic management)
 - e) provision of boundary hoarding behind any visibility zones
 - f) HGV deliveries and hours of operation
 - g) vehicle routing
 - h) measures to prevent deposit of materials on the highway
 - i) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused has been submitted to and approved in writing by the local planning authority. Only the approved details shall be implemented during the construction period.
- 10) Vehicles parked on the forecourt must be for display in connection with the use of the building, and for no other purpose.
- 11) The premises shall be used as a car showroom (and ancillary uses) only and for no other purpose.
- 12) The premises shall not be used for the purposes hereby permitted outside the hours of 09.00 to 19.00 Monday to Saturday and 10.00 to 17.00 on Sunday and Bank Holidays.
- 13) No construction work shall be carried out in such a manner as to be audible at the site boundary before 0730 hours or after 1830 hours Monday to Friday; no construction work shall be audible at the site boundary before 0800 or after 1300 hours on Saturdays and no construction work of any nature shall be carried out on Sundays or Bank/Public Holidays.
- 14) Prior to the commencement of the development details of sustainability measures shall be submitted to and approved in writing by the local planning authority. These details shall demonstrate how the development would be efficient in the use of energy, water and materials and shall show the location of any associated structures or equipment. The development shall be carried out in strict accordance with the approved details prior to the first occupation of the building, shall be maintained as such thereafter and no change shall take place without the prior written consent of the local planning authority.
- 15) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared which is subject to the approval in writing of the local planning authority. Development must accord with the approved details. Following completion of the remediation works, a verification report must be submitted to and approved in writing of the local planning authority.
- 16) The development hereby permitted shall be carried out in accordance with the following approved plans: Block Plan, Drawing Numbers 6517-P03 Rev A and 6517-P04.

END OF THE SCHEDULE