



Appeal Decision

Site visit made on 20 June 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Appeal Ref: APP/X4725/W/22/3290425

Waystone Ltd, Colorado Way, Castleford WF10 4TA

- 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 conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Manish Nakra against the decision of City of Wakefield Metropolitan District Council.
- The application Ref 21/00831/S7301, dated 26 July 2021, was refused by notice dated 6 January 2022.
- The application sought planning permission for the removal and demolition of Waystone Offices and replacement with MOT bay, car store and external car sales without complying with conditions attached to planning permission Ref 21/00831/FUL, dated 23 July 2021.
- The conditions in dispute are Nos 2, 3 and 4 which state that:
 - 2 *"The development hereby approved shall be carried out strictly in accordance with the following approved plans and documents, but only in respect of those matters not reserved for later approval, as listed below and at the end of this decision notice unless required otherwise by this decision or its attached conditions:*
Plans:
Site plan ref 2232-1 J
2232-OS(1)
1822 104B
Documents:
Application Form
Noise Assessment (NIA/9400/20/9410/v3)
Land Quality Assessment (refs: - 3449 and C399)"
 - 3 *"The use of the site shall only be for the undertaking of vehicular MOT's for vehicles falling within Class 1, 2, 3 or 4 and/or car sales."*
 - 4 *"The use for the undertaking of vehicular MOT's including all associated deliveries, shall not take place except between the hours of 08:00 - 18:00 Monday to Friday, 09:00 - 16:00 on Saturdays and at no time on Sundays and Bank Holidays. The use for the undertaking of car storage and car sales shall not take place except between the hours of 08:00 - 18:00 Monday to Friday and 09:00 and 16:00 on Saturdays, Sundays and Bank Holidays."*
- The reasons given for the conditions are:
 - 2 *"For the avoidance of doubt as to what is authorised by this permission and in accordance with the National Planning Practice Guidance (Use of Planning Conditions, paragraph 022)."*
 - 3 *"To ensure the development of the site accords with SPA5 of the Council's adopted Local Development Framework Site Specific Policies Local Plan and the NPPF."*
 - 4 *"In the interests of the amenity of neighbouring occupiers to accord with policy D9 of the Council's adopted Local Development Framework Development Policies Document and the NPPF."*

Decision

1. The appeal is allowed and planning permission is granted for the removal and demolition of Waystone Offices and replacement with MOT bay, car store and external car sales at Waystone Ltd, Colorado Way, Castleford WF10 4TA in accordance with the application Ref 21/00831/S7301, dated 26 July 2021, without compliance with condition numbers 1, 2, 3 and 4 previously imposed on planning permission Ref 21/00831/FUL, dated 23 July 2021, and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Manish Nakra against the City of Wakefield Metropolitan District Council. This application is the subject of a separate Decision.

Background and Main Issues

3. The appeal site is an area of land adjacent to Colorado Way in Castleford, formerly occupied by nine portable buildings used for office and storage purposes. The surrounding area contains a variety of land uses; to the east and south-east the area is primarily residential (although there is an area of vacant and overgrown land between the appeal site and houses to the east on Cannon Street), while the area on the west side of Colorado Way is occupied by a range of commercial and light industrial premises. Colorado Way itself is principally a link road for through traffic; however, as well as the appeal site it also provides access to the New Eastern Court Chinese restaurant and the Birchwood Farm pub/restaurant to the north.
4. The previous use of the appeal site ceased in March 2020. Planning permission was granted in July 2021 for the redevelopment of the site for MOT testing, and car storage and sales (I shall refer to this as "the original permission"). The redevelopment includes the construction of a new workshop building towards the northern end of the site; at the time of my site visit the steelwork frame of the new building appeared largely to have been erected. The appellant is now seeking to vary three conditions attached to the July 2021 permission so that some repairs can be carried out to vehicles which have failed their MOT test on the site. Although the Council's officers recommended approving the application, it was refused by the planning committee for two reasons; that the noise arising from the carrying out of repairs would have an adverse impact on living conditions for nearby residents, and that there would be an adverse impact on highway safety arising from an increase in vehicular movements on Colorado Way.
5. Accordingly, I consider that the main issues are the effect of varying the disputed conditions on:
 - Living conditions for nearby residents, with particular regard to the effect of noise and disturbance; and
 - Highway safety, with particular regard to whether or not there would be a harmful increase in the number of vehicular movements.

Reasons

Living conditions

6. The appeal proposal was accompanied by a Noise Impact Assessment report ("NIA"), which considered the likely effects of noise arising from the proposed development on nearby residents. The NIA identified the acoustic "weak point" (in other words, the principal source of external noise which may cause disturbance) as being open roller shutter doors on the southern elevation of the workshop. It identified the two nearest noise sensitive receptors as being dwellings at Cannon Street some 76m east of the doorways ("NSR1"), and at Merefield Way, around 58m to the south-east ("NSR2").
7. The existing dominant noise source in the area is road traffic. BS4142:2014¹ indicates that "the lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound source will have an adverse impact or a significant adverse impact". The NIA indicates that the operation of tools and test equipment within the test and repair bay would result in a predicted noise level at NSR1 some 24dB lower than the typical daytime background sound level, and 28dB lower at NSR2. The NIA therefore concluded that noise from the proposed use would have a low impact on the nearby receptors.
8. The appellant submitted to the Council a list of the types of vehicle repairs which would be carried out at the site². The Council's environmental health team noted that the NIA which accompanied the planning application was substantially the same as that which formed part of the original permission, and that it did not include noise from the listed repairs. However, the appellant commented that the equipment which would be used for repairs (such as hand tools and wheel guns) was already accounted for in the NIA, as it would already be used for MOT testing. The environmental health team concluded that the proposal to use the site for the specified repair activities would not have a significant adverse effect on living conditions for nearby residents.
9. There were several objections from interested parties regarding the potential impact of noise from repair activities, both in response to the planning application to amend the conditions on the original permission and in response to this appeal. Notwithstanding the views of the Council's planning and environmental health officers, the Council's planning committee considered that the noise from repairs "over and above the approved uses at the site" would lead to unacceptable noise and disturbance for local residents. However, while I note the interested parties' concerns, there is no substantive evidence before me which contradicts the submitted NIA and supports the committee's conclusion.
10. I am satisfied that, subject to the imposition of appropriate conditions to manage the nature of repair activities carried out on the site, varying the disputed condition to allow the carrying out of some vehicle repairs would not have an unacceptable adverse effect on neighbouring residents' living conditions in respect of noise and disturbance. The development would therefore comply with Policy D9 of the 2009 Wakefield Local Development Framework Development Policies Document (the DPD), which among other

¹ BS 4142:2014 Methods for rating and assessing industrial and commercial sound

² E-mail from appellant's agent to Wakefield Council dated 9 September 2021

things seek to ensure that new development does not have a significant detrimental impact on the amenity of neighbouring residents, and with the requirements of Paragraph 130 of the National Planning Policy Framework ("the Framework"), which seeks to create places with a high standard of amenity for existing and future users.

11. The decision notice also indicated conflict with Policy D20 of the DPD, which seeks to protect public health and the environment by controlling and preventing pollution. D20 does not specifically refer to the impacts of noise pollution, but while I accept that they could fall within a broad reading of the policy, for the reasons I have set out above I also find no conflict with D20.

Highway safety

12. The Council's planning committee considered that the proposal would result in an intensification of the use of the site, because of an increase in vehicular movements and consequent additional traffic on Colorado Way.
13. If repairs cannot be carried out on site, any vehicle failing an MOT test would need to be driven (in the event of no "dangerous" problems having been found) or otherwise transported to an alternative garage for repairs. Depending on the circumstances, a retest at the same centre can be carried out free of charge or at a reduced rate. It therefore seems likely that in most cases someone whose vehicle had failed its MOT would return to the same test centre, rather than take it to a different centre where a second full fee would be charged.
14. Carrying out some repairs to vehicles on the appeal site would therefore in my view be likely to lead to a decrease, rather than an increase, in the total number of vehicle movements taking place, as it would remove the need in many cases for a vehicle which has failed its MOT test to be taken to an alternative location to be repaired. The variation of conditions sought by the appellant would not increase the space available for carrying out MOT testing within the site, so would not in itself lead to any increased throughput of vehicles being tested. There is no substantive evidence before me whatsoever which supports the notion that the proposal would increase the number of vehicular movements.
15. I conclude that varying the disputed conditions would not lead to an increase in the number of vehicle movements to and from the appeal site, and there would be no harmful impact on highway safety. The proposal would therefore comply with Policy D14 of the DPD, which seeks to ensure the safe and free flow of traffic within developments and on the surrounding highway network, and with the requirements of Chapter 9 of the Framework, which among other things seeks to prevent development which would have an unacceptable impact on highway safety.

Other Matters

16. I have already indicated that the proposal prompted several comments from interested parties. Some of these comments appear to be based on the misunderstanding that the combined MOT testing and repairs would be carried out for longer hours than the already-permitted MOT testing. However, the appellant is not seeking to extend operating hours as part of this appeal proposal. The submitted evidence solely considered the noise impacts of testing

and repairs during the working day, and there is nothing before me which suggests or supports the idea of extending the operating hours.

17. Other interested party comments alluded to the appellant seeking to incrementally change the nature of the use of the appeal site by repeatedly applying to have conditions amended. However, while some people may object to such an approach (if that is indeed what it is), it is permitted by the system; my role is to determine this appeal on the basis of the planning merits and impacts of the specific proposal before me. Similarly, while there may already have been planning applications submitted seeking permission for alternative or additional uses within the site, they do not alter the issues in this case and have not had a bearing on my determination of this appeal.
18. Finally, some comments set out "in principle" objections to the scheme, including in respect of the loss of a landscaped grass verge, and to the design of and visual impact of the building on the site. Again though, these are not issues which fall within my determination of this appeal. None of the other matters raised have had a material bearing on my decision in this case.

Conditions

19. For clarity and to ensure compliance with the tests in the Framework and Planning Practice Guidance ("the PPG"), I have made minor amendments to the Council's suggested conditions where necessary.
20. I have deleted the disputed Conditions 2, 3 and 4, as indicated above. I have replaced them with new conditions permitting the carrying out of "associated repairs" as well as MOT testing; these conditions are now numbered 1, 2 and 3.
21. New Condition 1 defines the approved plans and documents, and is necessary for certainty. New Condition 2 restricts the use of the site in line with the terms of the application, although it now includes reference to the carrying out of "associated repairs"; it is necessary to ensure that the use of the appeal site complies with the aims for the former Glasshoughton Colliery site and surrounding land which are set out in Policy SPA 5 of the 2012 Wakefield Site Specific Policies Local Plan.
22. New Condition 3 defines the operating hours of the site, and now includes reference to the carrying out of "associated repairs". I have made minor changes to the Council's suggested wording, because as originally written the condition would, strictly speaking, have prevented the storage of vehicles on the site outside the permitted hours (and so would have had the presumably-unintended consequence of requiring stored vehicles to be removed each day to ensure compliance). I have instead specified the hours at which car storage and sales operations and processes can be carried out on the site. The operating hours of the site are unchanged from those of the original permission. This condition is necessary to protect living conditions for nearby residents in line with the aims of Policy D9 of the DPD.
23. With the development having commenced being commenced, I have deleted Condition 1 of the original permission as the standard time limit for the commencement of development is no longer necessary. The PPG makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. Conditions 5 to 20 of the original permission are therefore

reimposed, for the same reasons as they were originally required. The only change I have made to these conditions is that that they are now numbered from 4 to 19, as a consequence of the deletion of original Condition 1.

Conclusion

24. For the reasons given above I conclude that the appeal should succeed. I will therefore grant a new planning permission without the disputed Conditions 2, 3 and 4 but substituting 3 others. Condition 1 of the original permission is also deleted as it is no longer necessary. The other undisputed 16 conditions which are still subsisting and capable of taking effect are restated.

M Cryan

Inspector

Schedule of Conditions

- 1) The development hereby approved shall be carried out strictly in accordance with the following approved plans as listed below and at the end of this decision notice unless required otherwise by this decision or its attached conditions:

Plans:

- "Plans, elevations and site plan" drawing1 rev K
- 2232-OS(1)
- 1822 104B

Documents:

- Application Form
- Noise Assessment (NIA/9400/20/9410/v3)
- Land Quality Assessment (refs: 3449 and C399)
- List of repairs email from J R Planning (dated and received by the Local Planning Authority on 9 September 2021 at 15.46)
- Planning Statement

- 2) The use of the site shall only be for the undertaking of vehicular MOTs and associated repairs for vehicles falling within Class 1, 2, 3 or 4 and/or car sales.

"Associated repairs" are restricted to those listed/detailed within the e-mail from J R Planning dated and received by the Local Planning Authority on 9 September 2021 at 15.46)

- 3) The use of the site for undertaking vehicular MOTs and associated repairs, including all associated deliveries, shall not take place except between the hours of 08.00 and 18.00 from Monday to Friday, between 09.00 and 16.00 on Saturdays, and at no time on Sundays and Bank or Public Holidays.

"Associated repairs" are restricted to those listed/detailed within the e-mail from J R Planning dated and received by the Local Planning Authority on 9 September 2021 at 15.46.

Operations and processes in respect of the undertaking of car storage and car sales shall only take place between the hours of 08:00 and 18:00 Monday to Friday, and 09.00 and 16.00 on Saturdays, Sundays and Bank or Public Holidays.

- 4) The surface and foul water drainage scheme detailed within drawing EWE/2680/01 (revision B) dated 10th February 2021 submitted as part of application 20/01338/FUL shall be retained and maintained for the lifetime of the development.
- 5) There shall be no discharge of foul or contaminated drainage from the site to any part of the groundwater or surface water network, whether directly or via soakaway.
- 6) The development shall not be brought into use until a verification report demonstrating completion of the approved gas protection measures has been submitted to and approved, in writing, by the Local Planning

Authority. The installation and verification of the gas protection measures shall be in accordance with [Verification Requirements for Gas Protection System, YALPAG, Version 1.1, December 2016] The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the gas protection criteria have been met.

- 7) In the event that contamination is found at any time when carrying out the approved development, works must cease, and it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with best current guidance and practice, and where remediation is necessary a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. Following the completion of the measures identified within the approved remediation scheme, a verification report must be prepared, submitted to, and approved in writing by the Local Planning Authority in accordance with the timescales set out within the approved remediation scheme.
- 8) No external artificial lighting shall be erected within the site, unless and until details of the size, location, orientation, lighting level and any associated fixing apparatus have first been submitted to and approved in writing by the Local Planning Authority. The lighting shall be installed in accordance with the approved details and maintained whilst ever it remains in situ.
- 9) The development shall be constructed in accordance with the wall and roofing details set out within the Tata Trisomet roofing document and Trimapanel cladding document submitted as part of application 20/01338/FUL. The external colour finish of the walls shall be dark grey and the external colour finish of the roof shall be goosewing grey, all window frames shall be of a dark grey colour finish. No materials other than those approved in accordance with this condition shall be used which shall thereafter be retained and maintained for the lifetime of the development.
- 10) The development hereby approved shall not be brought into use until the boundary treatment detailed on submitted drawing 1revK has been installed. For clarity, the boundary treatment shall comprise the provision of a 2.4m high rendered concrete block wall finished in white along the full extent of the pink dotted line demarked on submitted drawing 1revK and a black 2.4m high weld mesh fence along the full extent of the green dotted line demarked on submitted drawing 1revK. The approved boundary treatment shall thereafter be retained and maintained for the lifetime of the development.
- 11) Development, insofar as it relates to: landscaping, shall be carried out / operated in accordance with the details submitted and approved under application reference 20/01338/SUB01 dated 6th May 2021 (to satisfy/discharge condition 12 imposed upon approved application 20/01338/FUL dated 19th March 2021). No part or phase of the development shall be brought into use until the landscaping has been implemented in accordance with the approved details, which shall thereafter be retained for the lifetime of the development.

- 12) No externally sited fixed plant, machinery and equipment (including ventilation and extraction equipment) or internally sited fixed plant, machinery and equipment (including ventilation and extraction equipment) which communicates directly to the exterior of a building, shall be used in connection with the development until a scheme for the control of noise arising from the said plant, machinery and equipment has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be retained, maintained and operated to throughout the life of the development. There shall be no change to the approved scheme other than with the prior written approval of the Local Planning Authority.
- 13) At no time shall any sound amplification equipment be used within any part of the area outlined in red upon the drawing titled 'OS' submitted as part of application 20/01338/FUL, for the purposes of playing music or making any other noise.
- 14) The finished slab level and site levels of the development hereby approved shall be in accordance with those set out within drawing 1revJ received 10th February 2021 submitted as part of application 20/01338/FUL. The finished floor level of the building hereby approved shall be no greater than 32.2m above ordnance datum (AOD). The development shall not be brought into use until the slab level and site levels have been completed. The slab level and site levels shall thereafter be retained and maintained for the lifetime of the development.
- 15) There shall be no external storage upon the site in excess of 1m in height and no external storage of waste.
- 16) Development (including demolition, construction, engineering and/or other operations) including works for site investigation and site preparation approved by this permission shall not commence until washing equipment for cleaning the wheels and undersides of vehicles has been provided on site to prevent mud and debris being deposited onto the highway. The washing equipment shall be fully operational and shall be used to clean all vehicles to ensure that they are free from mud and debris before they leave the site at all times during the carrying out of such works until its completion. Any mud or debris from the site which is deposited on to the highway during this period of works shall be removed immediately.
- 17) The development shall not be brought into use until all areas indicated to be used for vehicles and/or pedestrians have been laid out with a hardened, sealed and drained surface which shall be thereafter retained and maintained for the lifetime of the development.
- 18) Construction of the development hereby approved shall be undertaken in strict accordance with the materials storage and construction worker parking details indicated upon drawing 1revJ submitted as part of application 20/01338/FUL and shall be so retained, maintained and operated for the entirety of the construction phase of the development.
- 19) Delivery of vehicles associated with the use hereby approved shall be upon a vehicle which can carry no more than two cars.