



Appeal Decision

Site visit made on 12 July 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2022

Appeal Ref: APP/Y3940/W/21/3287001

Units 10, 11 & 12 Callow Park, Callow Hill, Brinkworth, Wiltshire SN15 5FD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Joe Priday against the decision of Wiltshire Council.
- The application Ref PL/2021/03412, dated 19 March 2021, was approved on 15 September 2021 and planning permission was granted subject to conditions.
- The development permitted is change of use of B1(a), B1(b) areas to sui generis use of, online car auction storage facility with guest area and reception. (B8 use class to remain) Including extensions and alterations to the units.
- The conditions in dispute are Nos 3, 4, 5, 7, and 9 which state that:
 - 3: The sui generis use for car auctions at Unit 11 & 12, Callow Park, Callow Hill, Brinkworth, SN15 5FD shall only operate during the hours of 08:00 to 18:00 hours Monday to Friday; 08:00 and 13:00 hours on Saturdays and not at all on Sundays, bank and public holidays unless otherwise agreed in writing by the Local Planning Authority. The B8 use in unit 10 of the same address and including delivery and dispatch of goods to and from the site shall be limited the hours of 07:00 and 20:00 Mondays to Saturdays and 10:00 and 17:00 on Sundays and Bank and Public Holidays unless otherwise agreed in writing by the Local Planning Authority.
 - 4: There shall be no test driving of vehicles to or from the site or within the site; and the use of the members room detailed on the first floor in drg no.505.1.101 (proposed units floor plans) shall be limited to staff and three visiting members of the car auctions use hereby permitted per day.
 - 5: The development/business hereby permitted shall be carried out in accordance with the Design & Access Statement submitted for units 10, 11 & 12 at Callow Park: [Received by the LPA on the 22nd of July 2021] in that a maximum of 3 non employees / staff to the site per day is approved; Car Auctions held will be virtual/online and not in person on site; and the use permitted is solely for the purposes of virtual car auctions, storage of vehicles for sale in auctions and related offices and ancillary uses.
 - 7: The development shall operate in accordance with the Travel Strategy approved under application 18/04263/FUL [Received by the LPA on the 1st of August 2018] and the Travel strategy addendum [Received by the LPA on the 22nd of July 2021] submitted under this application.
 - 9: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no motorcar or motorcycle racing including trials of speed and practicing for these activities.
- The reasons given for the conditions are:
 - 3: In the interests of character and appearance of the site and residential Amenity.
 - 4: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

5: For the avoidance of doubt and in the interests of proper planning.

7: In the interests of reducing the amount of private car movements to and from the development.

9: In the interests of residential amenity.

Decision

1. The appeal is allowed and the planning permission Ref PL/2021/03412 for change of use of B1(a) and B1(b) areas to sui generis use of online car auction storage facility with guest area and reception (B8 use class to remain), including extensions and alterations to the units at Units 10, 11 & 12 Callow Park, Callow Hill, Brinkworth, Wiltshire, SN15 5FD granted on 15 September 2021 by Wiltshire Council, is varied by deleting conditions Nos 3, 4, 5, 7 and 9 and substituting for them the following conditions:

- 3) Units 11 & 12, Callow Park, Callow Hill, Brinkworth, Wiltshire, SN15 5FD shall only be open to visitors between the hours of 08:00 to 20:00 on Mondays to Saturdays, and 08:00 to 18:00 hours on Sundays and bank and public holidays, unless otherwise agreed in writing by the Local Planning Authority.

The delivery and dispatch of goods to and from the site shall be limited to the hours of 07:00 to 20:00 on Mondays to Saturdays, and 10:00 to 17:00 hours on Sundays and bank and public holidays, unless otherwise agreed in writing by the Local Planning Authority.

- 4) There shall be no test driving of vehicles to or from the site or within the site.
- 5) Car auctions shall be held virtually/online and not in-person on site; the use permitted is solely for the purposes of virtual car auctions, storage of vehicles for sale in auctions and related office and ancillary uses.
- 7) The development shall operate in accordance with the Travel Strategy approved under application 18/04263/FUL [Received by the Local Planning Authority on 1 August 2018].

Application for costs

2. The appellant made an application for costs. This application for costs has been dealt with in a separate decision.

Background and Main Issue

3. The appeal site comprises Unit 10, and Units 11 & 12, at Callow Park, which is a light industrial and office business park. In September 2021 the Council granted planning permission for a change of use of B1(a) and B1(b) areas to sui generis use which included the display of cars to be sold at online auction, additional offices and guest area in Units 11 & 12 and alterations and extensions including a new reception area. Unit 10 would accommodate the storage of vehicles and ancillary offices.
4. There appears to have been some confusion at the time of the application about precisely what might be involved in the sui generis part of the proposal. However, since the submission of the appeal the appellant has confirmed that test driving, car club meet-ups and car rallies are not proposed at the site. However, driving simulator days for groups of up to 10 people within the building, ancillary to the main use, are intended to take place. I have dealt with the appeal on that basis.

5. The appellant now seeks to vary conditions Nos 3, 4, 5 and 7 insofar as they relate to hours of working and visitors to the premises and to remove condition No 9 which relates to the removal of permitted development rights.
6. As such, the main issue in this appeal is whether conditions Nos 3, 4, 5, 7 and 9 are reasonable and necessary and meet the other tests for conditions set out in paragraph 56 of the National Planning Policy Framework (the Framework), having particular regard to the character and appearance of the area, the living conditions of neighbouring residents, and highway and pedestrian safety.

Reasons

Condition No 3

7. The appeal site comprises 3 industrial units originally granted permission for storage¹, and office and research and development purposes². It lies at the southern end of an industrial estate, located within the open countryside accessed off Callow Hill. Beyond the estate to the north, are a number of residential properties and I noted sporadic residential development along the length of the lane.
8. The industrial estate, which comprises a group of large, well-designed buildings and areas of car parking space, has a commercial appearance in contrast to the rural appearance of the landscape around it. Callow Hill is single width in part, with no footpaths or street lighting and, although it serves a number of residential and commercial units, also has a rural character.
9. The online auctions are intended take place up to 19:00 hours each day of the week, with employees livestreaming the final 30 minutes of each auction. This activity is intended to be undertaken from the offices and the car showroom area within Units 11 & 12. However, condition No 3 currently prevents employees from running online auctions from their desks after 18:00 on weekdays or after 13:00 on Saturdays, or on Sundays. In this way, condition No 3 in effect curtails the running of online auctions at the times required as per the appellant's business model.
10. It also has the effect that office-based staff are not able to undertake any kind of work before 08:00 or after 18:00 on weekdays, even though these activities are contained within Units 11 & 12 and consequently would have a limited impact on the living conditions of nearby occupiers, especially considering that condition No 6 acts to limit noise from the site. As such, taking these points together, condition No 3 as it stands is unreasonable.
11. The appellant has accepted that controls on the timings of delivery and dispatch of car consignments and on the use of the car showroom would be reasonable and appropriate to protect residential amenity. I agree with this in principle, as unrestricted access by visitors to the site not coming to work, specifically the members room and car showroom, may have an impact on the character of the wider area, particularly if they arrive in groups late into the evening, in terms of noise, disturbance and general activity when residents generally expect a more peaceful residential environment.

¹ Application Ref: 15/04765/FUL

² Application Ref: 18/04263/FUL

12. The Design and Access Statement refers to a maximum of 6 vehicle movements per day and the Travel strategy addendum indicates that the maximum number of staff on site at any time would be 15. Hence, the proposal would not generate a high volume of vehicle movements per day. Moreover, some of these vehicle movements would likely be spread across the working day. Furthermore, a certain amount of low-level traffic noise is to be expected in the immediate vicinity of a light industrial and office business park such as Callow Park.
13. Considering this, and given that the proposed extended hours of 18:00 to 20:00 would avoid the night-time when most people would likely be sleeping, I consider that the proposal would not be harmful to the living conditions of nearby residents in relation to traffic noise. As under the appellant's business model it is unlikely that any staff or visitors would be driving particularly large vehicles (such as Heavy Goods Vehicles) to access or leave the site during the car showroom opening hours I am unconvinced, particularly given that the previous permission was unrestricted, that it is necessary to prevent the business operating on Sundays and public holidays.
14. The lane is already used by vehicular traffic during the hours of darkness in winter months and I am not aware of any accidents that have occurred during that time. Moreover, whilst I note that representations by statutory consultees were made on the basis of the information contained within the Design and Access Statement, no indication was given by the highways officer that the road was already used to capacity or was inherently unsafe, including the junction between Callow Hill and the B4042. In this context, it is unclear from what I have read why a later opening time would have any significant detrimental effect on highway safety or cause such congestion that would be harmful to living conditions.
15. In coming to a conclusion in relation to the first part of condition No 3, I note that the appellant's suggestion of the car showroom in Units 11 & 12 only being open to visitors between 08:00 to 20:00 hours Monday to Sunday and bank holidays would avoid visitors attending at unsociable hours, including in the late evening. Given my findings above, in my view this would provide appropriate restrictions for Monday to Saturday opening hours.
16. However, as the previous office use would have been unlikely to generate significant activities on Sundays and bank holidays, and considering the rural character of the wider area and the reasonable expectation of local residents to enjoy periods of quiet at such times, in my view it would be appropriate for opening times to be restricted to 18:00 hours on those days to maintain living conditions.
17. Hence, I consider that condition No 3 should be varied on this basis. As the car showroom is contained within Units 11 & 12 a reference to Units 11 & 12 would be sufficient within condition No 3. This would also cover the members area which has the potential to be used by visitors.
18. The appellant has not disputed the hours imposed by the second part of condition No 3 but asserts that the condition has the effect of forbidding the use of Unit 10 for storage outside of certain hours, when in reality the use of Unit 10 for storage is required at all times. As such this part of condition No 3 is not reasonable.

19. It is also not clear if the condition prevents staff from entering Unit 10 to check on the stored cars outside of the stated hours, meaning that condition No 3 is not precise in this respect. This part of the condition is also not enforceable because it would be practically impossible to readily detect if staff were visiting Unit 10 outside of the hours stated in the condition.
20. Thus, as the permission grants storage use for Unit 10 in the context of cars being stored on site prior to their auction, I consider that condition No 3 should be varied to ensure that the timing restrictions do not apply to Unit 10 itself but rather apply to the delivery and dispatch of goods to and from the site. Condition No 3 would then closely reflect condition No 13 of planning permission Ref 15/04765/FUL, which granted permission for Unit 10.
21. I note that condition No 7 of planning permission Ref 13/05538/FUL restricted operations up to 18:00, but this was in relation to industrial processes and plant/machinery/power tools which are not involved in the proposal before me.
22. Taking all of the above into account, in the terms of paragraph 56 of the Framework, condition No 3 is not reasonable, and is not enforceable and not precise in part. As such, condition No 3 must be varied, in the terms described above, to remedy these defects.

Conditions Nos 4, 5, & 7

23. Conditions Nos 4, 5, and 7 (via its reference to a Travel strategy addendum), all restrict the number of non-employees permitted to visit the site during working hours.
24. Condition No 5 has the effect of not allowing more than 3 non-employees / staff of any description to visit the site, which could potentially include tradespeople, people from other businesses, regulatory officials, or even the emergency services. Additionally, condition No 5 potentially places restrictions on prospective purchasers bringing guests with them in their vehicles which, to my mind, is not reasonable given the high purchase price of the vehicles. As such, condition No 5, as drafted, is overly-restrictive.
25. Whilst I note the Council's assertion that the proposal would generate significantly more traffic than previously there is little evidence to support this. In particular, although interested parties have referred to a figure of 180 journeys per week, and the Council has referred to an increase in the numbers of visitors and staff when compared to the permission for Unit 10, neither the permission for Unit 10 or for Units 11 & 12 were subject to any restriction on visitor numbers. As such, there was no bar within the planning permissions for a significant number of visitors to attend the site during working hours.
26. Indeed, from all that I have seen and read, the originally proposed office and research and development uses, given the area of floorspace within the buildings, could have been used much more intensively. The provision of a significant number of car parking spaces, whilst shared with other units in the wider site, also indicates the number of likely vehicles anticipated with that use.
27. Moreover, whilst the business on site entails a certain level of comings and goings, the access to the site does not have poor visibility and passing places for pedestrians and cyclists exist along Callow Hill. Considering this, and given the fairly low numbers of vehicles proposed to be delivered to and stored on

site, the evidence does not indicate that the proposal would result in severe residual cumulative impacts on the road network in terms of paragraph 111 of the Framework, or that it would likely result in harm to the living conditions of neighbouring residents.

28. Consequently, it would not be necessary or reasonable to restrict the numbers of non-employees / staff who can visit the site, including visiting members of the car auctions use, in terms of highway safety and the living conditions of neighbouring residents. As such, conditions Nos 4 and 5 should be varied to remove this requirement. Condition No 7 references a Travel strategy addendum which refers to a maximum of 3 member visits allowed per day, which for the same reasons as given above, is also an overly-restrictive limitation.
29. Condition No 5 currently refers to the use permitted being solely for the purposes of virtual car auctions, storage of vehicles for sale in auctions and related offices and ancillary uses. It is necessary for these elements to remain within the condition, as for enforcement purposes it is not usually possible to rely on a description of development alone to control a development.
30. The Travel strategy addendum referenced within condition No 7 relates to additional requirements over-and-above those found in the Travel Strategy. Given my findings above, that the proposal would not likely result in harm to the living conditions of neighbouring residents or cause highway and pedestrian safety issues, whilst I accept that this was the appellant's original proposal and one on which the Council based its decision, it is not reasonable that the appellant's business should be subject to additional controls over-and-above those found in the Travel Strategy, which I understand applies to other units within Callow Park and appears to be operating effectively.
31. Taking all of the above into account, in the terms of paragraph 56 of the Framework, conditions Nos 4, 5, and 7 are not reasonable in all respects. As such, conditions Nos 4, 5, and 7 must be varied (in the terms described above) to remedy these defects.

Condition No 9

32. The Council accepts that condition No 9 was attached incorrectly to the permission and should be removed, as the site and the related red line boundary do not provide scope for the activities otherwise allowed for under the permitted development rights in question.
33. Classes B and BA of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) both refer to development not being permitted if the land in question is a building. Although the Design and Access Statement states that parking spaces are associated with these units, the Location Plan submitted as part of this appeal shows that the appeal site consists of Unit 10, and Units 11 & 12, which are buildings. Hence, those permitted development rights could not be exercised in this case, given the constraints of the site.
34. Taking all of the above into account, in the terms of paragraph 56 of the Framework, condition No 9 is not necessary. As such, condition No 9 should be removed.

Summary

35. For the reasons given above I consider that as drafted conditions Nos 3, 4, 5, and 7 are not reasonable in all respects, and condition No 3 is not enforceable and not precise in part, in conflict with paragraph 56 of the Framework. Condition No 9 is unnecessary, in conflict with paragraph 56 of the Framework. Consequently, condition No 9 should be removed, and variations are required to conditions Nos 3, 4, 5, and 7.
36. However, in order to prevent significant harm to the character of the area, the living conditions of neighbouring residents, and highway and pedestrian safety, amended conditions as set out above are reasonable and necessary. Such conditions, and condition No 6 relating to noise emissions, are required to ensure that the scheme would comply with Core Policy 60 of the Wiltshire Core Strategy (adopted 2015) (Core Strategy) which provides that, amongst other things, the sustainable, safe and efficient movement of people and goods within and through Wiltshire will be supported and encouraged.
37. Similarly, these conditions are required to ensure that the scheme would comply with Core Policy 57 of the Core Strategy which provides that, amongst other things, new development must make a positive contribution to the character of Wiltshire through making efficient use of land whilst taking account of the characteristics of the site and the local context to deliver an appropriate development which relates effectively to the immediate setting and to the wider character of the area, and having regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, including the consideration of pollution (including noise).

Other Matters

38. Interested parties have made reference to alleged breaches of planning control, but these are not matters that I can assess in the context of this appeal; such matters may fall to the Local Planning Authority to address as necessary. Similarly, the conduct of the Local Planning Authority during the processing of the planning application is not a matter that I can assess in the context of a planning appeal. Furthermore, any future planning applications would be assessed by the Local Planning Authority on their own merits.

Conclusion

39. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed.

Alexander O'Doherty

INSPECTOR