



Appeal Decision

Site visit made on 26 September 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2022

Appeal Ref: APP/X4725/W/22/3296770

Waystone Ltd, Colorado Way, Castleford WF10 4TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr M Nakra against Wakefield Metropolitan District Council.
 - The application Ref 22/00091/FUL is dated 14 January 2022.
 - The development proposed is the removal of existing buildings, replacement with general car garage (MOT testing and general repairs), external car sales/ storage and beauty salon.
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Decision

1. The appeal is allowed and planning permission is granted for the removal of existing buildings, replacement with general car garage (MOT testing and general repairs), external car sales/ storage and beauty salon at Waystone Ltd, Colorado Way, Castleford WF10 4TA in accordance with the terms of the application Ref 22/00091/FUL, dated 14 January 2022, subject to the attached schedule of conditions.

Preliminary Matters

2. The appeal is against the non-determination of a planning application. The planning officer has indicated that it is likely that the application would have been referred to the planning committee and they would have recommended approval for the application. Having regard to a previously refused planning application at the appeal site, the Council indicate that there are two main issues relating to the planning application and they will form the main issues of this appeal.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the living conditions of nearby residents, with particular reference to noise and disturbance; and
 - The effect of the proposed development on highway safety.

Reasons

4. The appeal site is adjacent to Colorado Way and has an extensive planning history. Approval has previously been granted for a car garage, MOT testing, external car sales and storage at the appeal site. On my site visit I observed that a building was under construction at the appeal site which I understand relates to the previously approved development. Therefore, in considering the

effects of the proposed development, I have taken into account the fallback position.

5. The size and external appearance of the building is similar to that previously approved. The proposed beauty salon and general repairs are new elements compared to that previously granted planning permission. In contrast to the previously allowed appeal scheme¹, the proposal before me seeks a vehicle repair use that is not restricted to only vehicles which are being presented for MOT testing. The appellant highlights that as a result of the proposed beauty salon, the car garage area would be smaller than the previously approved MOT testing unit.

Living conditions

6. The surrounding area is characterised by a mix of uses including a restaurant, residential properties and commercial units. Residents assert that trees and shrubs have been cut down on the adjacent site, which is also owned by the appellant, and this increases noise.
7. I noted on my site visit that vehicles travelling along Colorado Way, which is an A-road, generate a noticeable and relatively constant level of background noise. The road noise is less prominent, but still audible, within Merefield Way and Cannon Street, where the nearby residential properties are located. Although there would be parking spaces close to the residential properties located on Merefield Way, the building would be situated at the far end of the appeal site, away from the residential properties. Therefore, there is a reasonable distance between the proposed building and nearest dwellings.
8. The appellant submitted a Noise Impact Assessment (NIA) with the planning application. The Environmental Health officer had no objections to the proposal, subject to recommended conditions. Their consultation response references car washing, which does not form part of the scheme before me. They confirm that they do not dispute the findings of the NIA.
9. The proposed beauty salon would be ancillary to the main use of the site and is not a use generally associated with substantial noise and disturbance. The proposed MOT testing and general repairs use would generate noise. However, having regard to the NIA, the noise generated by these uses would have a low noise impact on the nearest dwellings.
10. Planning conditions could restrict the hours of operation of the proposed uses. This would help to ensure that the site cannot be used at certain times of the day when neighbouring occupiers would expect a degree of peace and quiet, for example when they would wish to sleep.
11. There is no persuasive evidence to dispute the findings of the NIA or to demonstrate that the proposal would result in adverse noise and disturbance. Whilst I can understand the apprehension of local residents and the proposed uses are an unusual combination, their concerns are not supported by any substantive information that would justify the dismissal of the appeal on these grounds. Having regard to the Environmental Health consultation response, planning history of the site, NIA and the distance to the nearest dwellings, the proposed development would not have an unacceptable effect on the living

¹ APP/X4725/W/22/3290425

conditions of nearby residents, with particular reference to noise and disturbance.

12. Accordingly, the proposal would comply with Policies D9 and D20 of the Council's Local Development Framework: Development Policies (2009) (LDF). These seek, amongst other matters, to ensure proposals have no significant detrimental impact on the amenity of neighbouring users or residents and controlling pollution. It would also comply with 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.

Highway safety

13. The proposed access arrangement remains as previously approved, and the parking layout would be similar. The access is situated between two roundabouts, and as stated above, Colorado Way is an A-road. There is a wide pavement and grass verge, and there is good visibility in both directions. It has been drawn to my attention that Colorado Way is used to divert traffic when the M62 is closed, is a key route for emergency service vehicles, pedestrians struggle to cross the road and nearby uses including a school.
14. The appellant submitted a Highway Statement with the planning application. This highlights that the traffic movements associated with the MOT testing station and external car sales at the peak hours have already been deemed acceptable. It goes on to state that the traffic movements associated with the beauty salon and the general car repairs on site would not be distinguishable from the daily fluctuation on the local highway network. The statement also sets out the parking allocations for the different uses.
15. The Council's highways officer does not dispute the findings of the Highway Statement and no compelling evidence has been submitted to take a different view. I am satisfied that the access is adequate, the resultant traffic would not have a cumulative impact on the existing highway network and, taking into account the Council's parking requirements, the number of parking spaces would be sufficient. Moreover, in my view, any resultant on-street parking on nearby roads would be minimal and could be accommodated without there being an unacceptable effect on the ability to navigate the surrounding streets safely.
16. Consequently, taking into consideration the Highway Statement, Highways consultation response and the planning history of the site, the proposed development would not have an unacceptable impact on highway safety, including pedestrian safety and parking. Accordingly, the proposal would comply with Policy D14 of the LDF which seeks to ensure the safe and free flow of traffic within the development and on the surrounding highway network. It would also comply with chapter 9 of the Framework, which amongst other things, states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

17. In addition to matters relating to the main issues, I have considered in detail the objection comments. The concerns relate to a range of matters including flammable materials, uses in future, living conditions (overlooking, overbearing

and loss of light), not adhering to previous conditions, hazardous waste, pollution levels (air quality impacts, dust, odours, light), no electric vehicle charging points. In addition, visual amenity, insufficient landscaping, harm to wildlife, crime, trees felled, impact on other businesses, gap in wall to adjacent land, bins, disabled persons access and parking, sufficient similar uses locally and works to adjacent site.

18. The planning officer did not raise any concerns in relation to the other matters raised. The proposed development would not cause harm to the character and appearance of the area, taking into account the mixed character of the locality and previously approved scheme. The size and external appearance of the building remains similar to that previously approved, and considering the distance to the dwellings, the proposal would not have an unacceptable effect on living conditions. Having regard to the site's planning history, the proposed development would not have an unacceptable impact on wildlife, trees, pollution levels, health or increase crime.
19. Furthermore, existing uses in the locality do not make the proposed development unacceptable in planning terms. In addition, in terms of speculation about future proposed development, my role is to determine the appeal based on the planning merits and impacts of the proposed development before me.
20. Consequently, subject to appropriate conditions, there is no credible evidence before me that would lead me to an alternative conclusion to the planning officer on the other matters raised or that could justify the dismissal of the appeal on these grounds.

Conditions

21. I have assessed the Council's suggested conditions in light of guidance found in the Planning Practice Guidance. The suggested conditions referred to a previous planning application and drawings which do not form part of this application, or the development before me. Where necessary the wording of the conditions has been amended for clarity and precision. The appellant and Council were given the opportunity to comment on these amended conditions.
22. Although I recognise that construction is underway at the appeal site, the evidence before me suggests that this relates to the similar approved development. Therefore, I have included the standard time commencement condition. It is necessary to attach a condition specifying the approved plans as this provides certainty.
23. The Council's suggested condition 2 relates to the use of the site and restrictions relating to general repairs, and includes reference to classes and restricting general repairs. Whilst I consider the condition to be necessary to restrict the use of the site, I do not consider the condition needs to be as precise as suggested and I have amended the condition accordingly.
24. A condition restricting the hours of the uses permitted and construction hours are necessary, in the interests of the amenity of neighbouring occupiers. In order to ensure satisfactory drainage of the site and to prevent pollution of the water environment, conditions relating to foul and surface water and drainage are necessary. In order to address contaminated land matters to ensure safe development, conditions relating to a verification report and contamination are

necessary. In the interests of access and highway safety and the amenity of neighbouring occupiers, a condition is necessary relating to lighting.

25. A condition relating to materials is necessary to ensure they would have an acceptable visual impact. In the interests of amenity, conditions relating to the boundary treatment, landscape scheme and external storage are necessary. Conditions relating to plant, machinery and equipment, as well as sound amplification equipment, finished slab/floor level and noise management plan are necessary to protect the amenity of neighbouring occupiers. In the interest of highway safety, conditions relating to mud and debris as well as a construction method statement and delivery of vehicles are necessary.

Conclusion

26. I realise that this decision will come as a disappointment to those who objected against the proposed development. However, taking everything into account, there is no compelling reason to withhold planning permission in this case. The appeal therefore succeeds.

L Wilson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: OS 2232 (Location plan), 3449/07 (Proposed floor plans and elevations), Highway Statement (dated January 2022, reference 1822e), Noise Impact Assessment (dated 10 January 2022, reference NIA/9400/20/9410/v6/Colorado Way, Glasshoughton) and Planning Statement (JR Planning Consultants).
- 3) The use of the site shall only be for the undertaking of general car garage (MOT testing and general repairs), car sales/storage and the beauty salon hereby permitted.
- 4) Construction works relating to the development hereby permitted shall take place only between 08:00 – 18:00 Mondays to Fridays, 08:00 - 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 5) The use of the site for the undertaking of the general car garage (MOT testing and general repairs) and beauty salon, including all associated deliveries, shall only take place between the following hours: 08:00 - 18:00 Mondays to Fridays, 09:00 - 16:00 on Saturdays and at no time on Sundays and Bank Holidays. Operations and processes in respect of the undertaking of the car sales/storage shall only take place between the following hours: 08:00 - 18:00 Mondays to Fridays, 09:00 - 16:00 on Saturdays, Sundays and Bank Holidays.
- 6) The building hereby permitted shall not be occupied until surface and foul water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details before any part of the development is first occupied and shall be retained thereafter.
- 7) 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.
- 8) Surface water from vehicle parking and hardstanding areas shall be passed through an interceptor of adequate capacity or equivalent alternative treatment system prior to discharge. Roof drainage should not be passed through any interceptor. The treatment scheme shall be retained, maintained to ensure efficient working and used throughout the lifetime of the development.
- 9) The development hereby permitted 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.

- 10) 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.
- 11) 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.
- 12) Details of the wall and roofing materials to be used in the construction of the building hereby permitted shall be submitted to the local planning authority for approval prior to the materials being used to construct the building. The development shall be carried out in accordance with the approved details.
- 13) The development hereby permitted shall not be brought into use until the boundary treatment detailed on drawing ref 3449/07 (Proposed floor plans and elevations) has been installed. The approved boundary treatment shall thereafter be retained and maintained for the lifetime of the development.
- 14) The development hereby permitted shall not be brought into use until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 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 similar size and species.
- 15) 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.

- 16) At no time shall any sound amplification equipment be used within any part of the area outlined in red upon the drawing OS 2232 (Location plan), for the purposes of playing music or making any other noise.
- 17) The development hereby permitted shall not commence until details of the finished levels, above ordnance datum, of the ground floor of the building hereby permitted, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 18) There shall be no external storage upon the site in excess of 1m in height and no external storage of waste.
- 19) 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.
- 20) 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 and sub-base which shall be thereafter retained and maintained for the lifetime of the development.
- 21) The development hereby permitted shall not commence until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for: the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; measures to control the emission of dust during construction. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 22) Construction work relating to the development hereby permitted shall not take place until a Noise Management Plan has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the nearest noise sensitive receptors and measures to minimise noise and vibration impacts during the construction and operational phases of development. The approved scheme shall be implemented, retained and maintained during the construction and operational phases of development.
- 23) Delivery of vehicles associated with the use hereby permitted shall be upon a vehicle which can carry no more than two cars.
- 24) The parking spaces as shown for customers and staff (shown on drawing 1822-104F (visibility and vehicle tracking) contained within the Highway Statement (dated January 2022, reference 1822e)) shall not be used for the purposes of selling vehicles. All customer and staff parking spaces shall be

kept free from all obstruction and maintained thereafter throughout the life of the development.