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# Appeal Decision

Site visit made on 20 December 2022

**by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 January 2023**

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**Appeal Ref: APP/F4410/W/22/3304229**

**Land Opposite Toll Bar Primary School, Askern Road, Toll Bar, Doncaster DN5 0QR**

- 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 Keith Miller (Don Valley Properties Ltd) against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref 21/03313/FUL, dated 4 November 2021, was refused by notice dated 27 May 2022.
  - The development proposed is change of use of land to a hand car wash (Use Class Sui Generis) including two permanent storage container structures and associated works.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The Council's decision notice suggests that the proposal is partially retrospective. At the time of my visit, I saw that the development on the site, namely a storage container and portacabin, does not accord in position, form or use with the proposed development shown on the submitted plans. In reaching my decision I have assessed the development as shown on the submitted plans.
3. I have used the description of the proposal from the Council's decision notice as it more accurately and succinctly defines the development. However, I have removed the word retrospective as it is not an act of development.

## Main Issues

4. The main issues are the effect of the development upon i) the living conditions of neighbouring occupiers with particular regard to noise and disturbance, outlook, daylight and sunlight, and water spray, ii) highway safety and, iii) the adequacy of provisions for surface water drainage.

## Reasons

5. The appeal site comprises a small parcel of land occupied by a portacabin in use as a reception building and a storage container, to the west of Askern Road (A19). It forms part of a larger site that is allocated as an Employment Policy Area within the Doncaster Local Plan 2021 (DLP). It currently provides vehicular access to the steel framed industrial building to the rear of the larger business site, which I am advised by the Council is unauthorised and for which a planning application is pending determination.

6. Despite the industrial building to the rear, the surrounding area is predominantly residential in character. Toll Bar Primary School lies opposite and there are a limited number of small-scale commercial premises juxtaposed with the housing along Askern Road to the south.
7. The appeal site extends between the back edge of the pavement along Askern Road and just beyond the small rear garden of 1 Stone Cottages, an adjacent end of terrace property. However, a low brick wall and sliding gate have been erected part way into the site which separates the proposed car washing area from the frontage of the appeal site which has been laid out with car parking. The erection of a fence across the rear boundary would sever the appeal site from the wider business site.

#### *Living conditions*

#### *Noise and Disturbance*

8. The parties advise that the appeal site was previously in use as a car sales/repair business. However, there is no evidence before me of the nature of that business, its hours of operation or its impacts on the living conditions of neighbouring occupiers, such that I could form a view as to whether it was more or less disruptive to the local environment than the proposal before me. Moreover, the business is no longer in operation and all indication of the former use has been removed. I must therefore assess the proposal on the evidence before me.
9. The appeal site is subject to considerable background noise, arising from traffic using the A19. Nonetheless, sited in between the dwellings of No 1 Stone Cottages and those on Manor Estate to the south, the proposed car wash has the potential to cause noise and disturbance to neighbouring occupiers from the comings and goings of patrons and the activities associated with its use.
10. The appeal documentation and accompanying plans provide little cohesive information on the precise nature and extent of the car washing activities, where they would take place on the appeal site, whether multiple vehicles would be washed simultaneously, nor the equipment to be used. Nonetheless, it is apparent from the plans that there would be only minimal separation of vehicles from the living accommodation and garden of No 1, and the Manor Estate dwellings to the south, albeit these are slightly further away.
11. A Noise Impact Assessment (NIA) has been put to me in support of the proposal. The NIA appears to have been confined to assessing the impact of noise emitting from a high pressure jet wash and generator, and noise from queuing/idling engines. However, there may be other sources of noise such as car doors shutting, car radios playing (while vehicles wait) and conversation, along with the use of further noise emitting equipment including vacuums and valet machines, depending on the range of services to be offered. These latter types of equipment along with jet washes can generate significant noise levels for a short period of time, even if the generator is to be housed within an insulated enclosure. This is evidenced in the NIA which suggests that a high pressure jet wash could typically have a noise reading of 72 dB  $L_{Aeq, T}$  at 4m. This is some 10dB above the background noise level as measured at the appeal site which the NIA advises would be an indication of a significant adverse impact, depending on the specific context.

12. It is unclear as to how many jet washes would be in operation at the site. Even if it were just one jet wash, the intermittent operation of such equipment would produce bursts of high level noise throughout the day. I find that this would be particularly disturbing and audible to neighbouring occupiers above the background noise of passing traffic, that has a more consistent level of noise. Such noise disturbances would be particularly intrusive at the weekend when the proposed car wash is likely to be more in demand, and in operation between 10:00 and 16:00 hours. This would be a time when it is reasonable for neighbouring occupiers to expect the quiet enjoyment of their homes and gardens. The power washings and vehicular activity associated with the proposed use are further likely to be intrusive to neighbouring occupiers during warmer weather, when the occupants could reasonably expect to be able to open their windows. Such noise would be difficult to filter out for neighbouring occupiers and is therefore more likely to cause harm to their living conditions.
13. The NIA suggests that the provision of a timber fence on 3 of the external boundaries of the appeal site, which I understand from the plans to be the northern, southern and western boundaries, would mitigate the noise impact of the proposal. I am not convinced that the suggested fence would reduce or prevent noise emitting from the car washing area to a significant degree. This is due to the proximity of activities to the neighbouring dwellings, the type of loud, intermittent noises that would be generated and the lack of a canopy over the proposed car washing area to further contain noise. Even with the proposed fence to the full extent of the 3 external boundaries proposed, the occupiers of the dwellings at No 1 and those to the south on Manor Estate, are likely to experience significant noise and disturbance that would be harmful to their living conditions and quality of life.

### *Outlook*

14. Appendix 3 of the NIA suggests that the fence would not extend for the full extent of the northern or southern boundaries of the site and instead, would stop before meeting the eastern boundary with Askern Road. This appears to differ from the annotation shown on drawing number 007 which implies a fence to the whole extent of the northern and southern boundaries. In light of the discrepancies, I have assessed the proposal based on the 007 plan which appears to be the most up-to-date version of the car wash plan. Whilst there are no elevational drawings of the proposed fence, the annotation on the site plan infers it would be of a standard design to 2.4m in height, such that I am satisfied as to its visual appearance. From my observations, this would be significantly higher and more solid in appearance than the more modest boundary treatments found within the vicinity of the appeal site.
15. The side (southern) elevation of No 1 contains a window at ground floor which looks over the frontage of the appeal site. The proposed fence would extend across and above this window at a relatively close distance. I observed that this window is a secondary opening with the main window in the rear elevation facing towards the private rear garden. Nonetheless, the outlook from the rear ground floor window is limited by the presence of an existing outbuilding. In contrast, the side facing window provides a more open view along Askern Road. The position and height of the proposed fence would have a significantly enclosing and oppressive affect upon this window, resulting in harm to the living conditions of the occupiers of No 1.

16. A 2.4m high fence to the southern boundary of the appeal site, although set beyond the front gardens and footpath to the dwellings on Manor Estate, would nonetheless be on marginally higher ground. Though palisade fencing is industrial in its appearance it allows views through, enabling a sense of space. In contrast, the proposed fence due to its height and solid form would be imposing in views from the nearest dwellings on Manor Estate to the south, again resulting in significant enclosure, so as to be harmful to the living conditions of the existing occupiers.
17. The appellant suggests that they could erect a means of boundary enclosure up to 2m in height without planning permission, under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Whether or not this is the case, a smaller fence of this height would not appear to address the concerns raised in respect of noise and disturbance to neighbouring occupiers. As such, it would not be a realistic fallback position, given it would not serve the purpose it would be required for.

#### *Daylight and Sunlight*

18. The proposed 2.4m fence would be significantly taller than the existing boundary treatment between No 1 and the appeal site. Due to its height and position the entirety of the window would be obstructed and overshadowed. The occupiers of No 1 would experience a substantial loss of afternoon sunlight to their living space as a result. I am mindful that this side window is a secondary window. Nevertheless, it provides an important source of sunlight for the rear facing ground floor habitable room of No 1. Daylight would also be impacted but to a much lesser extent, given that the driveway would provide an intervening space between the window and the proposed fence where light could penetrate.
19. Whilst there may be a small degree of increased overshadowing of the rear garden space, given its size and orientation it would not adversely affect the overall useability of the outdoor space.
20. Sited to the north of the Manor Estate dwellings, the proposed fence along the southern boundary of the appeal site would not affect sunlight afforded to the principal windows of these neighbouring dwellings. Being beyond the front gardens and footpath the fence would be a sufficient distance from the front elevation of the dwellings so as not to result in a significant loss of daylight to the ground floor habitable rooms.

#### *Water Spray*

21. The operation of a car wash has the potential to result in spray from the utilisation of powered jet washes that could be blown outside of the site, depending on the specific weather conditions. Again, although the exact location of the jet washing bays is not clear, cars are nonetheless likely to be washed in proximity to the external boundaries of the appeal site, particularly that with No 1 to the north. The 2.4m fence is likely to provide a degree of shelter from spray but the proximity of the car washing activities is such that spray could readily blow up and onto the neighbour's driveway and garden in windy conditions. I find this is likely to cause harm to the living conditions of the neighbouring occupiers of No 1, and prevent the reasonable use of the rear garden area for typical domestic activities such as sitting out and drying washing.

22. As the proposed cabin would form an intervening feature between the cars to be washed and 133 Manor Estate, any blown spray is unlikely to reach this neighbouring dwelling or its private garden which is to the rear.

### *Conclusion – Living Conditions*

23. The proposal would adversely affect the living conditions of neighbouring occupiers with particular regard to noise and disturbance, outlook, sunlight and water spray. The proposal would conflict with Policies 4 and 46 of the DLP which seek to ensure that new development does not have unacceptable negative effects upon the amenity of neighbouring land uses or the environment. Conflict would therefore also arise with paragraph 130 of the National Planning Policy Framework (the Framework), which requires new development to have a high standard of amenity for existing users.

### *Highway Safety*

24. The proposed area for the change of use is relatively compact, between the proposed rear boundary and the brick wall and gate erected to the front of the site. Vehicles would pull off Askern Road via the existing dropped kerb access and onto the front forecourt that is currently laid out for car parking. Access into the site would be via the narrow gateway and vehicles would be routed in a one-way system around a central container to leave the site in a forward gear.
25. Having reviewed the appeal documentation it appears that there are discrepancies on the car wash plan (drawing number 007), such as to provide uncertainty regarding the exact impact of the proposal on highway safety. For example, the gate indicated on drawing number 007 at a scale of 1:200 results in the gate measuring 30m. As the gate is in situ, I was able to see that it is significantly less than 30m in length. As such, I am unable to rely on the tracking information so as to be confident that the compact nature of the site is sufficiently large enough to accommodate the suggested number of vehicles, whilst providing a safe working environment around vehicles for future staff.
26. Notwithstanding the discrepancies on the plans, given the proximity of the proposed car washing area to Askern Road, it is apparent from my observations that there would be limited space within the appeal site to accommodate queuing vehicles. It would require only a relatively short queue to develop before vehicles would create a tailback onto the highway. In this regard, I disagree with the findings of the Stage 1 Road Safety Audit (RSA) that suggests there is sufficient room within the appeal site for the stacking of vehicles.
27. I saw that there is a pedestrian refuge within Askern Road just south of the dropped kerb access into the appeal site. Were traffic to queue into the appeal site, the presence of the refuge would prevent other vehicles from being able to overtake to continue their journey's. It therefore seems to me that any obstruction caused by traffic queuing onto the appeal site would result in congestion on this well-trafficked route to and from Doncaster City Centre. This would be a source of annoyance and could lead to dangerous manoeuvres, that would be hazardous to both oncoming traffic and pedestrians attempting to cross the road, particularly those accessing the Primary School at drop off and pick up times.

28. I further note that whilst the 6m wide access would technically allow 2 standard sized cars to pass each other, if a car entered the site too widely, it is likely to interfere with the free passage of vehicles trying to egress.
29. Whilst the RSA indicates that banksmen could be used to control traffic on and off the site, I note the Highway Authority's advice that they would be unable to control traffic on the public highway. Therefore, I am not persuaded that this would be effective or provide suitable mitigation to prevent congestion or overcome the highway safety concerns I have identified.
30. Furthermore, it is unclear as to whether the car parking spaces currently laid out within the front forecourt of the appeal site would remain as part of the proposed development. Hence, the possibility of car parking on the frontage, adds further to the potential for the proposal to cause conflict between vehicles.
31. I find that the proposed change of use would have an unacceptable impact on highway safety. Accordingly, conflict is found with Policy 13 of the DLP which seeks to ensure new development does not result in unacceptable impact on highway safety, or severe residual cumulative impacts on the road network, objectives shared with paragraph 111 of the Framework.

#### *Drainage*

32. The appeal site is located within Flood Risk Zone 3, an area with a high probability of flooding. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The proposed development falls within the 'less vulnerable' category of the Flood Risk Vulnerability Classification set out in Annex 3 of the Framework, and Planning Practice Guidance Table 2, given that it constitutes an 'other services/general industry' use.
33. The crux of the dispute between the parties is with regard to the proposals for the discharge of surface water drainage which would be to the public sewer. Following the Council's concerns regarding the provision of a 19mm connection pipe to the existing sewer, an amended drainage strategy (drawing number DR-C-0100 P3) was produced with an enlarged pipe of 100mm diameter and a flow rate of 12.5 litres/second.
34. Notwithstanding that the Environment Agency has not objected to the proposal on flood risk grounds, there is no evidence before me that the existing sewer network has capacity for the increased flow rate that would arise from the enlarged orifice size. Nor has confirmation been put to me that the discharge rate would be acceptable to Yorkshire Water. The nature of a car wash use is such that large volumes of water would discharge across the site. It is therefore important that excess water does not leave the site in an uncontrolled fashion. On the evidence before me, I cannot be satisfied that it would not cause flooding elsewhere off-site. Neither am I satisfied that a condition could reasonably deal with discharge rates, particularly if they were unsatisfactory to Yorkshire Water as this would necessitate a change to the proposed plans.
35. Insufficient information has been provided to demonstrate that the scheme makes adequate provision for surface water drainage. Consequently, it fails to



comply with Policy 57 of the DLP which seeks to ensure that flood risk is managed in accordance with the Framework. The proposal conflicts with paragraphs 167c of the Framework that requires new development in areas at risk of flooding to incorporate sustainable drainage systems.

### **Other Matters**

36. The appellant is concerned that in meeting the advice of one Council department, their proposal has contravened another. They further suggest that the Council has not considered setting the proposed fence further into the appeal site or, the possibility of more visually harmful operations for example, the erection of large warehouse buildings. Whilst I understand the appellant's frustration, it is nonetheless incumbent upon them to ensure that the proposal addresses all of the site constraints and meets the development plan policy requirements. Moreover, it is for the decision-maker to assess the development as a whole, as is proposed to them.
37. I have considered the appellant's statement that the proposed car wash would make efficient use of a brownfield site, in an accessible location that would provide a service to local clients, investment to support local services and generate local employment in an area that experiences high levels of deprivation. Whilst any contribution to job creation would be worthwhile, the scale of the development is such that the benefits in these regards would be relatively limited. Furthermore, the Council has advised that the site forms part of an employment policy area where proposals for employment generating uses are supported, subject to compliance with a number of criteria (Policy 4 of the DLP). It seems to me therefore, that there may be other employment generating uses that could be accommodated on the site, that would not result in the harmful impacts identified above.
38. The appellant suggests the proposal would be a sustainable form of development in compliance with paragraph 11 of the Framework. However, paragraph 12 of the Framework is clear that development which conflicts with an adopted development plan should usually be refused. Moreover, the Framework shares similar aims to the development plan of protecting the living conditions of neighbouring occupiers, preventing unacceptable impacts on highway safety and ensuring adequate surface water drainage. Hence, I find that the policies of the Framework taken as a whole, do not weigh in favour of allowing the appeal.

### **Conclusion**

39. I have found that the proposal would not be harmful to daylight afforded to neighbouring occupiers. However, this lack of harm is neutral in the planning balance, so it does not outweigh my findings in respect of the effect of the proposal in relation to noise and disturbance, outlook, sunlight, and water spray to neighbouring occupiers, highway safety and surface water drainage. For the above reasons, having considered the development plan as a whole, the approach in the Framework and all other considerations, the appeal is dismissed.

*M Clowes*

INSPECTOR