



## Appeal Decision

Site visit made on 31 January 2023

**by E Grierson BSc (Hons) MSc MRTPI**

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

**Decision date: 14 February 2023**

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**Appeal Ref: APP/V2255/W/21/3287424**

**Car Park Storage Rear of Unit 2-4 Stickfast Farm, Sheppey Way, Bobbing ME9 8QP**

- 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 Terry Stockwell against the decision of Swale Borough Council.
  - The application Ref 21/504232/FULL, dated 30 July 2021, was refused by notice dated 5 October 2021.
  - The application sought planning permission to park and store and sell used cars and light commercial vehicles in connection with MOT service facility without complying with conditions attached to planning permission Ref 18/502358/FULL, dated 27 June 2019.
  - The conditions in dispute are Nos 4 and 9 which state that: The site shall not be open to the public other than between the hours of 7am to 7pm on weekdays and Saturdays, and not at all on Sundays or Bank Holidays and No vehicles shall be stored on the site above a height of 1.5 metres.
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### Decision

1. The appeal is allowed and planning permission is granted to park and store and sell used cars and light commercial vehicles in connection with MOT service facility at Car Park Storage Rear of Unit 2-4 Stickfast Farm, Sheppey Way, Bobbing ME9 8QP in accordance with the terms of the application, Ref 21/504232/FULL, dated 30 July 2021, without compliance with condition number 9 previously imposed on planning permission Ref 18/502358/FULL dated 27 June 2019 and subject to the conditions contained in the schedule to this decision.

### Main Issues

2. The main issues are the effect that amending conditions 4 and 9 would have on:
  - the character and appearance of the surrounding area, and
  - the living conditions of the occupiers of neighbouring dwellings with regard to noise and disturbance.

### Reasons

*Character and Appearance*

3. Planning permission<sup>1</sup> has been granted on the appeal site to allow the parking, storage and selling of used cars and light commercial vehicles and the appellant has confirmed that the development is in place. The appeal seeks to vary conditions 4 and 9, relating to the opening hours to the public and the height of vehicles on the site, of the original permission. This is to allow visitors to the site on Sunday and Bank Holidays (excluding Christmas Day, Boxing Day and Easter Sunday) between 10am and 4pm and increase the permitted height of vehicles on the site to 2.1 metres.
4. The original permission allows the parking and storage of vehicles on the appeal site up to a maximum height of 1.5 metres. The appeal site is surrounded by tall palisade fencing and is located adjacent to existing large industrial/agricultural buildings on two sides. Although adjacent to agricultural fields to the rear, the existing fencing and buildings give the appeal site an industrial appearance. The open storage of modern day vehicles on the appeal site may be different from previous agricultural uses. However, the storage of smaller vehicles is already permissible on the site. Furthermore, when set against the existing fence and the large buildings on the surrounding commercial estate, the presence of slightly taller vehicles would be well contained and not appear overly prominent or incongruous in the surroundings.
5. Due to its location to the rear of the estate, there would be limited views of any of the vehicles from the Sheppey Way. Any views from the adjacent public right of way would be partially obscured by the existing fencing of a similar height and the proposed landscaping on the submitted site plan, once implemented. Therefore, I am not persuaded that vehicles up to a height of 2.1 metres would be significantly harmful to the overall character and appearance of the open countryside.
6. Opening the appeal site to the public on Sundays and Bank Holidays would introduce some additional footfall and cars to the appeal site from visiting members of the public. However, this would be for short periods of time only and the impact upon the overall character and appearance of the appeal site would be limited.
7. I therefore conclude that amending conditions 4 and 9 would not have a harmful impact on the character and appearance of the surrounding area. As such I find no conflict with the relevant sections of Policies ST3 and DM14 of the Swale Borough Local Plan (the LP) 2017. The relevant sections of these policies seek to ensure that development contributes to protecting the intrinsic value, landscape setting, and beauty of the countryside, its buildings and the vitality of rural communities, reflecting the positive characteristics and features of the site and locality.

### *Living Conditions*

8. There are a number of neighbouring dwellings in close proximity to the appeal site on the opposite side of Sheppey Way. Although there are several industrial and agricultural uses within the vicinity of the appeal site and these dwellings, the surrounding area is largely rural countryside and its peaceful nature contributes positively to the occupiers living conditions. At present condition 4 prevents the public visiting the appeal site on Sundays and Bank Holidays. This was originally imposed in the interests of the living conditions of the occupiers

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<sup>1</sup> 18/502358/FULL (the original permission)

of nearby properties and the peaceful enjoyment of the countryside and nearby public footpath.

9. Should the condition be amended to allow the public to visit the appeal site on Sundays and Bank Holidays between 10am and 4pm, it would result in comings and goings to the appeal site on these days where there are currently none. The appellant has outlined that there would be a maximum of 5-6 vehicles visiting the site on these additional days. With this figure taken from a survey conducted at another premises in Sittingbourne, where an average of 6 visitors on a Sunday were recorded over a 6 week period. However, whilst this may be the case, visitor numbers would not be restricted and could be significantly greater than this predicted figure.
10. The additional vehicle movements to and from the appeal site on these days, test drives relating to car sales and the additional footfall from visiting members of the public, would generate additional disturbance and noise to the occupiers of the neighbouring dwellings. This would be particularly noticeable on a Sunday and Bank Holidays, where occupiers are more likely to be at home, enjoying the tranquillity of the surrounding countryside and when industrial sites such as this one are generally quieter, as opening restrictions are more commonplace. Although there is currently existing traffic using Sheppey Way on these days, visitors would be required to manoeuvre into and out of the appeal site via the access road. Therefore, these movements entering and exiting the appeal site would be distinguishable from general passers-by and create a greater level of disturbance.
11. It has been brought to my attention that some of the existing premises on the farm and light industrial complex, in which the appeal site is located, have no stipulated operating times, that heavy machinery is used seven days a week on the neighbouring farm site and that the approach road to the appeal site is also used by other companies on Sundays. However, no evidence has been provided to support these claims. Nevertheless, the opening of the appeal site on Sundays and Bank Holidays in isolation, would still create additional disturbances to the occupiers of neighbouring dwellings on days where they currently benefit from some levels respite.
12. The proposed variation to condition 4 would also reduce the opening hours of the appeal site during the week from 7am to 7pm on Weekdays and Saturdays to 8:30am and 6pm on these days. However, this small change in opening hours during the week would not outweigh the resultant harm to the living conditions of the occupiers of neighbouring dwellings identified from extending opening hours on Sundays and Bank Holidays. A condition is also suggested restricting deliveries to the appeal site to weekdays only, as there are no restrictions from deliveries taking place at the weekend at present. However, as the appellant has indicated that deliveries have never taken place on Sundays, it seems unlikely that a condition would be necessary to restrict such activity or that this would make additional opening hours to the public on Sundays and Bank Holidays acceptable.
13. It is noted that the nearby crematorium may operate seven days per week. However, this is located further from neighbouring dwellings and due to the nature of this use would be unlikely to generate significant amounts of noise. There is also a nearby pub which may attract a number of vehicles. However, this type of use would be more commonplace within a residential environment

and is vastly different to the permitted use of the appeal site and other surrounding industrial and agricultural uses.

14. As the appeal site is set back from Sheppey Way, changes to the heights of the vehicles parked on the appeal site would not be visible from neighbouring properties. Therefore, amending condition 9 would not have a detrimental impact on the living conditions of the occupiers of neighbouring dwellings
15. However, for the reasons above I conclude that amending condition 4 would have a harmful impact on the living conditions of the occupiers of the neighbouring dwellings and would conflict with the relevant sections of Policies ST3 and DM14 of the LP. The relevant sections of these policies seek to ensure that development contributes to protecting the tranquillity of the countryside and causes no significant harm to amenity and other sensitive uses.

### **Other Matters**

16. Additional opening hours on Sundays and Bank Holidays may provide additional jobs on the appeal site. However, as these additional opening hours would be limited, the benefit of additional jobs would be minimal and would not outweigh the harm found to the living conditions of the occupiers of the neighbouring properties. Furthermore, additional opening hours on the appeal site would not provide any additional car maintenance services for local people, which is undertaken on the neighbouring site also owned by the appellant, and therefore would not be given any weight in this appeal.
17. It is noted that the appellant expected the application to be decided by the Council's planning committee rather than a delegated decision. However, this has no bearing on my consideration of the appeal or the overall outcome.

### **Conditions**

18. I saw during my site visit that the appeal site was being used for the parking and storage of cars. Furthermore, the appellant has confirmed in their final statement that the development is in place. Therefore, I have not imposed the standard time limit condition for the commencement of the development.
19. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I condition remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

### **Conclusion**

20. For the reasons set out above, the appeal is allowed insofar as it relates to the amendment of condition 9. However, as it has been found that amending condition 4 would result in harm to the living conditions of the occupiers of neighbouring dwellings, the proposed changes to this condition have not been implemented.

*E Grierson*

INSPECTOR

## **Schedule of Conditions**

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 1477/1 and 1447/2.
2. No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority. These details shall include:
  - A statement of why lighting is required, the proposed frequency of the use and the hours of illumination
  - A site plan showing the areas to be lit relative to the surrounding area, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features.
  - Details of the number, location and height of the lighting columns or other fixtures.
  - The type, number, mounting height and alignment of the luminaries.
  - The beam angles and upwards waste light ratio for each light.
  - An isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties.
3. The site shall not be open to the public other than between the hours of 7am to 7pm on weekdays and Saturdays, and not at all on Sundays or Bank Holidays.
4. The site hereby permitted shall be used for the storage and sale of vehicles only and for no other uses whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not.
5. No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
6. 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.
7. The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

8. No vehicles shall be stored on the site above a height of 2.1 metres

END OF SCHEDULE