



Appeal Decision

Site visit made on 31 October 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2023

Appeal Ref: APP/X4725/W/23/3319447

Land off Colorado Way, Castleford

- 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 Roberts against Wakefield Council.
 - The application Ref 22/02202/FUL, is dated 25 October 2022.
 - The development proposed is mixed use development of 9 commercial units (classes B2, B8 and E) and 2 buildings for use as car sales incorporating green roofs, green walling, renewable energy technologies and associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for mixed use development of 9 commercial units (classes B2, B8 and E (g)(iii)) and 2 buildings for use as car sales incorporating green roofs, green walling, renewable energy technologies and associated external alterations and landscaping at land off Colorado Way, Castleford in accordance with the terms of the application, Ref 22/02202/FUL, dated 25 October 2022, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Roberts against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal is made against the Council's failure to give notice of its decision within the prescribed period. The Council has set out its case and putative reason for refusal in its appeal statement. Based on what is before me, I see no reason to disagree.
4. Notwithstanding the description of development in the heading above which has been taken from the application form, a revised description was agreed by the main parties during the course of the application as follows: '*mixed use development of 9 commercial units (classes B2, B8 and E (g)(iii)) and 2 buildings for use as car sales incorporating green roofs, green walling, renewable energy technologies and associated external alterations and landscaping*'. I have used this description in my decision.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of nearby residents with regard to outlook.

Reasons

6. The appeal site is located within an area of mixed uses. Immediately to the north is a restaurant with another restaurant further beyond. Across Colorado Way from the site are several industrial units. To the east and south are residential properties.
7. At the time of my site visit, a building was on the site. This has been constructed under permission reference 22/00091/FUL, where the building was to be used as a car garage for MOT testing and general repairs. With the appeal scheme, the building would be used for car sales (car sales 1).
8. The other proposed car sales building (car sales 2) would be located close to the southern boundary of the site, as would part of the u-shaped commercial units. The rear of the two storey dwellings at 37, 39 and 41 Merefield Way, which are specifically referenced by the Council in its appeal statement, are orientated towards the site and have windows serving habitable rooms in their rear elevations and rear gardens separated from the site by a tall close boarded fence.
9. The submitted evidence sets out that there would be just over 13 metres between 37 Merefield Way and the car sales 2 building. There would be around 12 metres between 39 and 41 Merefield Way and the U shaped commercial units building. The submitted plans show that the commercial units building would sit at a slightly lower level than the nearest properties on Merefield Way while the car sales 2 building would sit slightly higher. The height of both buildings would be lower than the height of the dwellings although they would sit at around the same height as the first-floor windows.
10. The introduction of built development along the southern boundary of the site would change the nature of the outlook for residents in the nearest dwellings. Nevertheless, given the separation distances proposed, the windows in the rear elevation of the nearest dwellings would retain a relatively open aspect. Although the proposed landscaping area is relatively narrow, there would be scope for appropriate planting that would help to soften the appearance of the proposed buildings, as would the proposed green wall for the commercial units building. The proposed development would not therefore unduly dominate or have an overbearing effect on the outlook from the rear facing windows serving habitable rooms or the outdoor amenity areas of the nearby dwellings on Merefield Way.
11. Although not specifically reference by the Council, concern has been expressed by interested parties about the loss of light and privacy to these dwellings. The location of the proposed development to the north and the separation distances would mean that there would be no unacceptable overshadowing or loss of light.
12. Also raised by interested parties is the effect on outlook for residents of properties on Cannon Street to the east. The submitted plans show that there would be around 12 metres separation between the proposed commercial units building and the nearest property on Cannon Street. This would be sufficient to ensure that the proposed development would not have an oppressive or overbearing effect on outlook for residents of this property, even accounting for its single storey character.

13. No windows are proposed in the rear of the commercial units building. The separation distance and proposed landscaping would be sufficient to ensure that the privacy of nearby residents would not be unacceptably harmed.
14. I therefore conclude that the proposal would not unacceptably harm the living conditions of nearby residents with regard to outlook. Accordingly, the proposal would accord with the residential amenity requirements of Policy D9 of the 2009 adopted Wakefield Local Development Framework Development Policies and chapter 12 of the National Planning Policy Framework 2023.

Other Matters

15. The noise impact assessment (NIA) submitted with the application identifies that the existing main noise source in the area is road traffic, which is consistent with my observations. With the recommended mitigation measures, the NIA concludes that the proposal would result in noise levels at the nearest noise sensitive receptors lower than the typical daytime and night-time background noise levels. Consequently, the NIA concludes that the proposal would have a low impact on nearby receptors. The Council's environmental health officer has not raised concerns with the methodology used in the NIA or noise, dust or odour that may arise, subject to conditions. While noting the interested parties' concerns, there is no substantive evidence that would warrant me reaching a different conclusion.
16. There is no evidence to suggest that the site is of a high ecological value. While some vegetation has been removed, a landscaping scheme could provide suitable mitigation. Appropriate measures can be put in place to manage surface water and drainage to ensure that there would be no unacceptable increase in flood risk. A condition requiring details of boundary treatments and security measures would ensure that appropriate safety and security measures would be put in place.
17. The Highway Authority has not raised any concerns about the visibility, geometry or capacity of the proposed access, the parking levels proposed, the capacity of the access to accommodate the levels of traffic likely to be generated by the proposed development, or the safe use of the highway for vehicles and pedestrians. In the absence of any substantive evidence to the contrary, I have no reason to conclude that the proposal would have an unacceptable impact on highway safety.
18. The description of the development supplemented by a condition would restrict the use of the commercial units to that specified. There may have been a number of applications at the site seeking permission for alternative uses, but the planning system allows for this. Other potential uses for the site have been suggested including for public use, that there are better locations in the town centre for retail and small businesses and there is no need for more car sales premises. However, I am required to determine the application on its own planning merits, and for the reasons given above, I have found it acceptable.
19. None of these other matters alter or outweigh my conclusion on the proposal.

Conditions

20. I have considered the conditions suggested by the Council and have amended the wording of certain conditions in the interests of precision.

21. As well as the standard time condition, and for certainty, one is required to ensure that the development is carried out in accordance with the approved plans.
22. A condition requiring details of the construction phase is necessary to ensure that the impacts of construction on the living conditions of residents and highway safety are minimised. Details of slab and floor levels is necessary to protect the living conditions of local residents and to ensure highway safety and parking provision is satisfactory and that drainage systems are acceptable. These conditions are required prior to the commencement of development to ensure that the relevant details are acceptable and compliance with their requirements at a later time could result in unacceptable harm.
23. A number of conditions are required in the interests of highway safety. These require the layout of areas for pedestrians and vehicles, the closing of the redundant access off Colorado Way, a specified gradient for the access to the lower level of the site, the provision of defined sightlines for the access, and a servicing delivery and management plan. In the interests of sustainable transport, conditions requiring a travel plan and cycle parking are necessary.
24. In the interests of the living conditions of nearby residents, conditions are necessary to restrict the hours of operation and the uses for the commercial units, to require details of the boundary treatments and security measures, and to require the implementation of the submitted lighting scheme and the noise mitigation measures identified in the NIA.
25. Conditions requiring details of the external materials for the buildings, a hard and soft landscaping scheme, and the provision of bat and swift boxes and hedgehog hole(s) are necessary in the interests of the character and appearance of the area and biodiversity. I have also included a condition to limit when the removal of vegetation can take place during the construction phase, as recommended in the appellant's ecological impact assessment.
26. In the interest of public health and safety, schemes to address land contamination risks and gas protection measures are necessary. A condition is necessary to ensure the development provides sustainable energy measures. To achieve satisfactory drainage, a condition is necessary to require the implementation of the drainage scheme.

Conclusion

27. The proposal would accord with the development plan as a whole. There are no material considerations of sufficient weight to indicate that permission should be withheld. I therefore conclude that the appeal should be allowed.

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun within three years of the date of this permission.
- 2) The development hereby approved shall be carried out strictly in accordance with the following approved plans and details:
 - Location plan ref 3618/LP
 - Drainage Strategy ref EWE/2913/01 rev C
 - Drainage assessment (rev C)
 - Site plan ref 3618/04 rev Q
 - Elevations and floor plans of commercial units ref 3618/05 rev B
 - Elevations and floor plans of car sales building 1 ref 3618/06 rev B
 - Elevations and floor plans of car sales building 2 ref 3618/06 rev C
 - Tree screening plan ref BA- 84041 ITP rev B
 - Tree survey constraints plan ref BA 94041-ITS rev A
 - Arboricultural impact assessment ref BA 84041 AIA rev C
 - Tree Protection Plan ref BA 84041ITpp rev A
 - Section plans ref 3618/10 rev D
 - Planning and Design and Access Statement
 - Preliminary Investigation (dated March 2022)
 - Geoenvironmental and Geotechnical appraisal (dated June 2022)
 - Ecological Impact Assessment (dated 16th September 2022)
 - Lighting scheme (dated 19/10/2022- page 1 of 2)
 - Parking canopy 3618/09
 - Transport Statement (dated September 2022)
 - Air Quality Assessment (report dated 12th July 2022)
 - Energy Statement (dated July 2022)
 - Existing layout ref 3618/08
 - Noise Impact Assessment (dated 22nd September 2022)
- 3) Development shall not commence, including any demolition works, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP must include, as a minimum, details of the following:
 - i. Parking provision for site operatives and visitor vehicles;
 - ii. The location(s) for the loading and unloading of plant and materials;
 - iii. Proposed access routes for construction traffic and how such traffic will be managed;
 - iv. The location(s) for the storage of all construction plant, equipment and materials;
 - v. Wheel washing facilities and any other measures to prevent the transfer of mud and debris being brought on to the public highway;
 - vi. Contractors' compounds and storage arrangements for cranes and plant, equipment and related temporary infrastructure;
 - vii. The enclosure of the parts of the site associated with each phase of development and the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
 - viii. Signage (types and location) for directing construction traffic;
 - ix. Access/egress by emergency vehicles;
 - x. Measures to manage and minimise dust emissions;

- xi. Measures to manage and minimise noise emissions (including hours of construction/engineering/development works and deliveries of construction materials;
 - xii. A scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - xiii. Construction lighting (type and location).
- All demolition, engineering and construction works must be undertaken in accordance with the approved CEMP which must be fully implemented and adhered to throughout the construction of the development.
- 4) Development shall not commence until a scheme providing a section plan and finished slab and floor levels together with corresponding existing and finished ground levels of the undercroft parking areas and of surface and land drainage associated with any works, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the buildings shall not be occupied until the approved works have been completed. These shall be so retained for the lifetime of the development.
- 5) Notwithstanding the submitted plans, prior to car sales building 2 and the commercial units 1-9 (as detailed on plan 3618/04 Rev Q) hereby permitted being constructed above foundation level, details of the external walling, colour finish and roofing materials of these buildings shall be submitted to and approved in writing by the Local Planning Authority. Car sales building 2 and commercial units 1-9 shall be constructed in accordance with the approved materials which shall thereafter be retained and maintained for the lifetime of the development.
- 6) No part of the development hereby permitted shall be occupied/brought into use until details of gas protection measures to be installed within the new buildings hereby permitted (as a precautionary measure without first being investigated) have been submitted to and approved in writing by the Local Planning Authority. As a minimum these measures should attain a BS8485:2015+A1:2019 Gas Protection Score of 3.5 or higher for residential buildings. Any installation should be in line with C735 - Good Practice on the Testing and Verification of Protection Systems for Building against Hazardous Ground Gases (CIRIA, 2014). The approved gas protection measures shall be installed and/or undertaken before the development is first brought into use.
- 7) No part of the development hereby permitted shall be occupied/brought into use until a verification report demonstrating completion of the installation of appropriate gas protection measures in buildings has been submitted to and approved in writing by the Local Planning Authority. The installation and verification of the gas protection measures should be in accordance with Verification Requirements for Gas Protection Systems, YALPAG, Version 1.1, December 2016. The approved scheme shall be retained and maintained for the lifetime of the development.
- 8) Notwithstanding the submitted plans, no part of the development hereby permitted shall be occupied/brought into use until a scheme detailing a perimeter boundary treatment plan and elevations, including all retaining walls, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the location, height, type, style and method of

installation of all perimeter boundary treatments, including all retaining walls. The approved scheme shall be implemented before the development is first occupied/brought into use and shall be retained thereafter for the lifetime of the development.

- 9) Notwithstanding the details submitted on site plan 3618/04 rev Q and within the Ecological Impact Assessment prepared by Middleton Bell Ecology dated 16/09/22, no part of the development hereby permitted shall be occupied/brought into use until a scheme detailing hard and soft landscaping and tree/shrub planting, including the details of all existing trees and hedgerows on and adjoining the site and any to be retained, has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall detail the surfacing for all areas to be hard landscaped, the phasing of the landscaping and planting, and a management and maintenance plan. The development and the works comprising the approved scheme shall be implemented in accordance with the approved phasing. The approved landscaping scheme shall, from its completion, be maintained for a period of five years. If, within this period, any tree, shrub or hedge dies, become diseased or be removed, it shall be replaced with others of similar size and species. The areas indicated for use as soft landscaping shall be retained as soft landscaped areas for the lifetime of the development and used for no other purpose.
- 10) No part of the development hereby permitted shall be occupied/brought into use until a scheme has been submitted to, and approved in writing by the Local Planning Authority which sets out all measures to minimise the risk of crime and meet the specific security needs of the site and the development. The approved scheme shall be implemented before the development is first occupied/brought into use and retained thereafter for the lifetime of the development.
- 11) No part of the development hereby permitted shall be occupied/brought into use until a scheme detailing the location, specification and type of bat and swift boxes to be installed on the new buildings hereby permitted and hedgehog hole(s) in the new boundary fencing has been submitted to and approved in writing by the Local Planning Authority. The development shall incorporate the approved details before the development is first occupied/brought into use and shall be retained for the lifetime of the development.
- 12) No part of the development hereby permitted shall be occupied/brought into use until a scheme detailing covered, secure, cycle storage facilities within the site has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall detail the design, materials, location, size and scale of the intended cycle storage facilities. The development shall not be first occupied/brought into use until the approved scheme has been implemented. The approved scheme shall thereafter be retained and maintained for the lifetime of the development.
- 13) No part of the development hereby permitted shall be occupied/brought into use until a servicing delivery and management plan has been submitted to and approved in writing by the Local Planning Authority. The servicing delivery and management plan shall include details of how the uses hereby permitted will be serviced, when associated delivery/service vehicles will use the site, and where they will park and manoeuvre on site during delivery/servicing operations. Once

the development is brought into use, it shall thereafter be operated in accordance with the approved servicing delivery and management plan.

- 14) During the construction of the development hereby permitted, no removal or any works to hedgerows, trees and shrubs shall take place between 1st March and 31st August inclusive unless a competent ecologist has undertaken a bird survey immediately before the vegetation has been cleared and provided written confirmation to the Local Planning Authority that no nests or breeding birds will be harmed or disturbed or that there are appropriate measures in place to protect nesting birds on the site.
- 15) In the event that unexpected contamination is found at any time when carrying out the 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. These approved schemes shall be carried out before the development is resumed or continued.
- 16) Within the first six months of any part of the development hereby permitted being occupied/brought into use, a Travel Plan shall be submitted to the Local Planning Authority for approval in writing. The Travel Plan shall include measures to improve and encourage the use of sustainable transport and details of when these measures will be introduced. To support the promotion of the use of sustainable modes, the Travel Plan shall include how the Travel Plan will be managed; targets aimed at lowering car use, particularly single occupancy trips, from/to the site; a programme for monitoring the Travel Plan and its progress and how the Travel Plan and its objective of more sustainable travel will be promoted. The approved Travel Plan shall be brought into use within two months of the written approval of the Local Planning Authority and thereafter retained throughout the lifetime of the development.
- 17) No part of the development hereby permitted shall be occupied/brought into use until all areas indicated to be used by vehicles and/or pedestrians have been laid out with a hardened and drained surface and sub-base. Provision shall be made to direct run-off water from the hard surface and sub-base to a permeable or porous area or surface within the curtilage of the site. Such areas shall be retained for the lifetime of the development.
- 18) No part of the development hereby permitted shall be occupied/brought into use until the existing redundant access off Colorado Way has been permanently closed and the footway crossings removed, and the footway reinstated.
- 19) No part of the development hereby permitted shall be occupied/brought into use until sightlines (2.4m x 70m visibility splays along Colorado Way) have been provided, the sightlines shall be thereafter retained and maintained such that there is no obstruction to visibility exceeding 1.0m in height above the adjacent carriageway channel line.

- 20) No part of the development hereby permitted shall be occupied/brought into use until the drainage works/systems as detailed within EWE/2913/01 REV C, plan 3618/04 rev Q and Drainage Assessment Final Rev C, have been implemented on site. The drainage works/systems shall thereafter be retained and maintained for the lifetime of the development.
- 21) The gradient of the access road down to the lower level of the site shall not exceed 1:12. The access road shall thereafter be retained as such throughout the life of the development.
- 22) The development hereby permitted shall be undertaken in accordance with the renewable energy technology measures set out in the submitted Energy Statement prepared by ARB Consulting dated July 2022, which shall be retained for the lifetime of the development.
- 23) The development hereby permitted shall be carried out in accordance with the details set out in the lighting scheme detailed on plan 'Colorado Way -C' which shall be retained and maintained for the lifetime of the development. No further/additional lighting shall be installed within the site.
- 24) The development hereby permitted shall be carried out in accordance with the recommendations of the Noise Impact Assessment prepared by Environmental Noise Solutions Limited dated 22nd September 2022, and specifically the mitigation measures set out in sections 4.1 and 4.2. All implemented noise mitigation measures, set out within the Noise Impact Assessment shall be retained as such thereafter for the lifetime of the development.
- 25) The car sales buildings (identified as car sales 1 and car sales 2 on plan 3618/04 Rev Q) hereby permitted shall not operate outside of the hours of 08:00 to 18:00 Monday to Friday and 09:00 to 16:00 on Saturdays, Sundays and Bank and Public Holidays.
- 26) The commercial units 1-9 (as detailed on plan 3618/04 Rev Q) hereby permitted shall not operate outside the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays. The use of the units shall not operate on Sundays or Bank or Public Holidays.
- 27) Notwithstanding the provisions of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting that Order with or without modification), the use of the commercial units (nos. 1-9) as identified on plan 3618/04 Rev Q, shall be restricted to uses falling within use classes: B2, B8 and Class E (g)(iii) of the Town and Country Planning (Use Classes) Order 1987 (as amended) only.