



Appeal Decisions

Site visit made on 18 January 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal A: APP/D1780/C/22/3313503

Land at Itchen Business Park, Kent Road, Southampton SO17 2LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr S Xhebexhia of DSG Car Sales against an enforcement notice issued by Southampton City Council.
 - The enforcement notice was issued on 24 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the continued use of the Land for car sales in breach of condition 1 on planning permission reference 21/00101/FUL.
 - The requirements of the notice are: (a) Cease the use of the Land for car sales; and (b) Remove from the Land all buildings and equipment associated with the use of the Land for car sales.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/D1780/W/22/3310370

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 for the change of use of the land for car sales (sui generis use) and construction of ancillary site office and workshop for which a previous planning permission was granted for a limited period.
 - The appeal is made by Mr S Xhebexhia of DSG Car Sales against the decision of Southampton City Council.
 - The application Ref 22/00633/FUL is dated 21 April 2022.
 - The application sought planning permission for the change of use of the land for car sales (sui generis use) and construction of ancillary site office and workshop granted planning permission for a limited period Ref 21/00101/FUL, dated 29 April 2021.
 - The permission is subject to a condition requiring the cessation of the use on or before 29 April 2022.
 - The reason given for the condition is: To enable the Local Planning Authority to review the special circumstances under which planning permission is granted for this type of development.
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Summary of Decisions

1. The appeals are dismissed and the enforcement notice is upheld with a variation.

Preliminary Matter

2. There has recently been a revised National Planning Policy Framework (the Framework) published by Government. It however does not raise new issues that are determinative for the purposes of my assessment and therefore injustice to the parties does not arise.

Appeals A and B - The ground (a) appeal and refusal of planning permission

Main Issue

3. The main issue is the effect of the use on highway safety and neighbouring operations.

Reasons

4. The site is located towards the rear of a small business park which is situated upon the approach to a wastewater treatment works. It is accessed from Kent Road, which is residential in character and largely lined on both sides by on-street parking. It also serves Saltmead Estate, which comprises further residential development.
5. Planning permission was granted in April 2021 for the use of the site for car sales. It was subject to a 1-year temporary planning condition in the interests of the special circumstances under which the permission was considered to have been granted. The appellant now seeks a permanent planning permission as a result of the appeals before me.
6. The planning permission was subject to a number of planning conditions, most notably for the purposes of my assessment, condition 6, which precludes the delivery of vehicles by transporter, other than in unforeseen circumstances, and then not more than once per week with the transporter not exceeding 9m in length and with capacity for only one vehicle, amongst other things.
7. The evidence before me is that the eastern boundary of the site was not previously enclosed, which thereby allowed transporters to access across a neighbouring site. This boundary has since been enclosed and I could see during my site visit that the limited width and general layout of the approach roads would mean that the manoeuvring and parking of transporters during deliveries would likely obstruct these roads.
8. Whilst I accept that for the duration of deliveries this is unlikely to significantly hinder access to and the viability of neighbouring businesses, there might be some inconvenience. However, there is then little evidence to persuade me that the access to the wastewater treatment works would not be adversely affected given the location of its respective gated entrance.
9. Furthermore, whilst the Council may not hold an objection from the local highway authority, the onus remains on the appellant to demonstrate that the use remains acceptable. There is then very little professional highways evidence before me to demonstrate that transporters can be manoeuvred safely, or that their deliveries would not result in an unacceptable impact on highway safety for different road users and back onto Kent Road.
10. I am then not persuaded that transporters would not be used simply because the appellant asserts that when cars are now sold, they are replaced by cars

driven individually to the site. The Council also holds some evidence pertaining to the use of transporters which has not been disproven by the appellant.

11. I accept that there are a substantial number of vehicle movements associated with other users of the business park, and this might even involve transporters. There is evidence of historical commercial uses in this location and the development does not create a new access. However, the number and type of vehicle movements only serves to heighten the additional potential conflict and risk to highway safety that is posed by the continuation of the car sales use in the absence of suitable evidence.
12. I appreciate the appellant considers there has been a low level of consultation response, however, this does not automatically translate into a development that is not harmful.
13. I conclude the use is harmful to highway safety and neighbouring operations in contravention of saved Policies SPD1(i) and TI2 of the City of Southampton Local Plan Review (2015). These policies, amongst other things, require that development does not unacceptably affect safety and that road safety would not be adversely affected. For the same reasons it contravenes the highway safety objectives of the Framework. I however do not find conflict with Policies CS6 and CS18 of the Local Development Framework Core Strategy Development Plan Document (2015) as these relate to, amongst other things, securing infrastructure and employment growth.

Conclusion

14. For the reasons given above I conclude that the appeals against the enforcement notice and refusal of planning permission should fail.

Appeal A – The ground (g) appeal

15. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short and that 4 months is required to allow sufficient time for vehicles to be sold or removed from the site.
16. I accept that a period of 4 months would then strike the appropriate balance in order to allow the appellant to comply with the requirements of the notice, without unduly perpetuating the breach of planning control.
17. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application and against the refusal of planning permission.

Formal Decisions

Appeal A

19. It is directed that the enforcement notice be varied by:
 - substituting '*4 months*' as the time for compliance with the notice.

20. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

21. The appeal is dismissed.

Paul T Hocking

INSPECTOR