



Appeal Decision

Site visit made on 20 May 2024

by H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2024

Appeal Ref: APP/Z3825/W/23/3333492

264A Crawley Road, Horsham, RH12 4HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Blackedge Properties Ltd against the decision of Horsham District Council.
 - The application Ref is DC/23/1725.
 - The application sought planning permission for *change of use of vacant car showroom (sui generis) to retail unit (Class E(a))* without complying with a condition attached to planning permission Ref DC/22/1812, dated 16 June 2023.
 - The condition in dispute is No 9 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or re-enacting that Order), the premises hereby permitted shall be used for retail use (Class E(a)) for the sale of beers, wine, spirits and sundry goods by Majestic Wine Warehouses Ltd, and for no other purposes whatsoever, (including those falling within Class E(a), (b), (c), (d), (e), (f), (g) as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) without express planning consent from the Local Planning Authority first being obtained.*
 - The reason given for the condition is: *Changes of use as permitted by the Town and Country Planning (General Permitted Development) Order or Use Classes Order 1987 are not considered appropriate in this case due to (insert with reasons) under Policy 33 of the Horsham District Planning Framework (2015).*
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Decision

1. The appeal is allowed and planning permission is granted for change of use of vacant car showroom (sui generis) to retail unit (Class E(a)) at 264A Crawley Road, Horsham, RH12 4HG, in accordance with the application Ref DC/23/1725, without compliance with condition number 9 previously imposed on planning permission Ref DC/22/1812, dated 16 June 2023 and subject to conditions in the attached schedule.

Preliminary Matters

2. An alternative scheme for the same site is the subject of a separate appeal under reference APP/Z3825/W/23/3325135. Whilst I have considered both cases, I have issued separate decisions in the interests of clarity.

Main Issue

3. The main issue is whether the disputed condition is necessary and reasonable having regard to the highway effects and adequacy of the parking provision.

Reasons

4. The reason for imposing the condition is not entirely clear from the decision notice itself due to the oversight which has left "*insert with reasons*" within the body of the text. Nonetheless, given the evidence submitted by the Council, it is clear that it relates to the highway effects and suitability of the parking provision relative to the nature of the use proposed.
5. The way in which the condition has been personalised to '*Majestic Wine Warehouses Ltd*' is unreasonable as the business may change ownership or trading name. The limitation to prohibit sales of anything other than beers, wines, spirits and sundry goods seeks to limit the intensity of the retail use, suppressing the number of customers and associated vehicles.
6. The separate scheme on the site has been allowed under reference APP/Z3825/W/23/3325135. That alternative scheme was for a retail proposal which involved a greater total floorspace and thus, a modestly more intensive retail use. In respect of that scheme, the parking provision and highways aspects were considered. The overall conclusion was that, subject to conditions, the on-site customer parking would be adequate for the anticipated demand and nature of trips to the site in relation to that proposal and that it did not conflict with Policy 41 of the Horsham District Planning Framework (HDPF) (2015). That scheme now constitutes an alternative fallback position in relation to the current proposal and does not tie the retail use of the site to any specifically named retailer.
7. Furthermore, in a consultation response on the appeal application, the Highway Authority raised no objections on highway grounds to the removal of condition as it is not anticipated that it would result in a significant impact on the local highway network. The Highway Authority did not object to alternative proposals which involved more intensive retail uses either. In this context, having reviewed the evidence and taking account of the current fallback position, my view is that the removal of the condition would not give rise to any prejudicial effects on highway safety through the provision of 10 parking spaces on the site and related alterations at the access point.
8. In the circumstances, the removal of the condition would not result in any harm to the local highway network or raise conflict with Policy 41 of the HDPF. However, a condition limiting the nature of the use is necessary to ensure that the Council has control over any future changes of use from retail to alternative uses under Class E that may materially alter the parking demand and highway effects from the use of the site.
9. In view of the above, the disputed condition is not necessary or reasonable with regard to the highway effects of the proposal. The removal of the condition would not bring the development into conflict with, in particular, Policies 32, 33 or 41 of the HDPF. These Policies collectively seek to ensure that new developments provide an attractive, functional, accessible, safe and adaptable environment and adequate parking and facilities to meet the needs of anticipated users.
10. Additionally, the condition as currently framed is not reasonable having regard to the six tests for conditions set out in the National Planning Policy Framework or the Planning Practice Guidance, and its removal does not conflict with the original description of the development.

Other Matters

11. I note the change in character and intensity that local residents anticipate from the general convenience retail use proposed in comparison to the relatively quiet car showroom use or restricted goods retailer. Given the urban and busy character of the area, my view is that there would be no material harm to the living conditions of neighbouring occupiers from noise or disturbance. Similarly, whilst I understand that residents use the layby fronting their houses to park, it is part of the public highway and cannot be protected for the private interests of the residents, many of whom have access to private parking which would remain accessible.
12. It is alleged by a local resident that the strength of the opposition of the Planning Committee has not been properly encapsulated in the Council's case and that the Highway Authority has failed to properly analyse the submitted evidence. I have understood the Council's case, both as presented in this appeal and that relating to the alternative scheme. I have no reason to discredit the presented evidence or the views of the Highway Authority's professional officer. Whilst the Planning Committee's views are noted, I have reached a different view about the acceptability of the proposal before me, based on the evidence, its own merits and the alternative fallback position which now forms a material consideration.
13. I have also noted the submissions of an objector that refers to the original permission being made in favour of a particular operator based, not only on its traffic and highway effects, but also on the retail sequential test and water neutrality considerations. As a fallback position now exists in relation to an alternative scheme for a general retail use that has addressed these aspects, they are not determinative factors in the current appeal.
14. As no extensions are proposed under this appeal, the objections from local residents about the effects on their living conditions from the proximity of the new built form and its related effects have been considered separately in relation to the correct scheme.

Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites (the Arun Valley Protected Sites)

15. Water supply to Horsham District is largely provided by Southern Water from its Sussex North Water Resource Zone (WRZ) which is an area of serious water stress. The appeal site has always been and would continue to be supplied with water from the WRZ, in particular, from Hardham.
16. The River Arun and its floodplain contain habitats and species of international importance. They support a series of wetland meadows, alluvial grazing marsh and former raised peat bog, dissected by a network of ditches. Variation in soils and water supply lead to a wide range of ecological conditions and hence a rich and diverse flora and fauna. The relevant qualifying features of the Protected Sites formally comprise: wildfowl customerand waterbird assemblages, including Bewick's swan, shoveler, teal and wigeon; wetland invertebrates, as well as a range of rare flora, including duckweed, water-cress, milfoils, dropworts and pondweeds.
17. The conservation objectives for the Arun Valley Protected Sites are to ensure their integrity by maintaining or restoring the extent, distribution, structure

and function of the qualifying habitats and species, the processes on which they rely and the population and distribution of those species within the sites. The hydrology of the Arun River is the major factor affecting the quantity, depth and flow of water within the Arun Valley Protected Sites, which in turn contribute to achieving the favourable conservation status of their qualifying features.

18. Water abstraction within the WRZ is adversely affecting the integrity of the Arun Valley Protected Sites through the reduction in water levels and flow within their wetland habitats. Accordingly, further developments within the WRZ must not add to existing impacts, and one way of achieving this is to demonstrate water neutrality, i.e., no additional abstraction from the WRZ.
19. The submitted collated evidence of the appellant confirms that the historic lawful use of the site as a car showroom generated a demand of around 300m³ of water per annum. The robust evidence corroborates that this should be taken as the baseline.
20. A planning permission has already been granted for a change of use of the proposed premises to a Class E(a) retail unit for which the intended occupier provided projections for water demands. These were lower than the baseline figure of around 300m³ and thus, the Council screened out the proposal and issued planning permission with a condition to restrict the Use Class E(a) to the intended occupier and to the sales of alcoholic goods and related sundry items. This gives a lawful position of the premises being used for Class E(a) purposes with a reduced water demand than the previous use as a car showroom as a fallback position.
21. The current proposal seeks the removal of the condition that limits the operation of the permitted Class E(a) store to only the named occupier for the purposes of the sale of alcoholic drinks and related sundry items to allow for the store to be used for Class E(a) purposes by undefined retailer. This would maintain the existing building footprint.
22. The information provided demonstrates that the water demand from a retail use would be reduced by at least 50% of that relative to the lawful use of the premises as a car showroom with associated regular washing activities and would therefore be at least water neutral. Given the water demand savings envisaged, there is sufficient headroom to allow for a buffer to be added as a precautionary measure.
23. On the basis of the above, conditions would not be needed to secure specific mitigation other than to prohibit any changes of use between use classes within Use Class E in case there would be a difference in water demands between a retail use and other permitted uses within Class E.
24. Natural England has been consulted in respect of the above as the Statutory Nature Conservation Body and has confirmed its agreement that the proposal would be water neutral and would not have a likely significant effect on the Arun Valley Protected Sites. Consequently, the proposal would not conflict with Policy 31 of the HDPF which, amongst other things, seeks to protect the species and habitats of particular importance.

Conditions

25. As any permission granted would stand alongside the existing permission, it is necessary to reimpose all other relevant planning conditions that are not in dispute between the parties. However, the time limit for commencement cannot be extended, so I have adapted the time limit condition as necessary.
26. As stated above, a variation of condition 9 is necessary to control any changes of use within Use Class E(a) to ensure they are acceptable prior to implementation, having regard to the main issues above. The condition prohibits changes of use within Use Class E(a) under the General Permitted Development Order 2015, as amended. This is consistent with the condition on the alternative permission granted for the same site.

Conclusion

27. The variation of the condition as described would not raise any conflict with the development plan. There are no other considerations of such materiality that they otherwise indicate that permission should be withheld.
28. For the foregoing reasons, the appeal is allowed.

H Nicholls

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 16.06.26.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule below:
 - Location Plan, received 26.09.2022
 - Site Location Plan, Ref 2133-PD01, received 27.10.2022
 - Proposed Parking Arrangement, Ref 31371/AC/008, received 20.10.2022
 - Existing Block Plan, Ref 2133-PD03, received 20.10.2022
 - Existing Site Plan, Ref 2133-PD04, received 20.10.2022
 - Existing Ground Floor Plan & Roof Plan, Ref 2133-PD05, received 20.10.2022
 - Existing Elevations, Ref 2133-PD06, received 20.10.2022
 - Proposed Elevations, Ref 2133-PD08, received 20.10.2022
 - Proposed Ground Floor & Roof Plan, Ref 2133-PD07, received 20.10.2022
 - Proposed Highway Layout, Ref 31371/AC/005 rev B, received 16.01.2023
 - Site Plan, Ref 2133-PD02, received 26.09.2022
- 3) No part of the development shall be first occupied until such time as the remaining existing redundant vehicular crossover onto Crawley Road has been physically closed in accordance with plans and details submitted to and approved in writing by the Local Planning Authority.
- 4) No part of the development shall be first occupied until such time as the vehicular access and highways works serving the development has been constructed in accordance with plan reference 31371/AC/005 rev B which may be subject to minor modification as part of the Section 278 Technical Approvals process. The approved details shall thereafter be retained as such.
- 5) No part of the development shall be first occupied until the car parking has been constructed in accordance with the plan reference 31371/AC/008. These spaces shall thereafter be retained at all times for their designated purpose.
- 6) No part of the development hereby permitted shall be occupied until means for the charging of electric vehicles by way of fast charging points have been installed in accordance with details that have been submitted to and been approved in writing by the Local Planning Authority. The details shall have regard to the Council's latest Air Quality & Emissions Reduction Guidance document and include a plan of all charging points, their specification, means of allocation, and means for their long term maintenance. The means for charging electric vehicles shall be retained as such thereafter.
- 7) No part of the development hereby permitted shall be occupied until a Delivery, Collection & Service Management Plan, which includes details of the types of vehicles, how deliveries and collections will take place and the frequency of deliveries has been submitted to and approved in writing by the Local Planning Authority. All deliveries and collections shall thereafter be carried out in accordance with the approved plan.

- 8) No part of the development hereby permitted shall be occupied until the cycle parking facilities serving it have been provided within the site boundaries. The facilities shall thereafter be retained for use at all times. The cycle parking facilities shall thereafter be retained as such for their designated use.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or re-enacting that Order), the premises hereby permitted shall be used for Class E(a) and for no other purposes whatsoever, (including those falling within Class E(b), (c), (d), (e), (f), (g) as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) without express planning consent from the Local Planning Authority first being obtained.
- 10) The premises shall not be open for trade or business except between the hours of 09:00 and 20:00 Monday to Sunday.
- 11) No deliveries to or from the site in connection with the development hereby approved shall take place outside of 08:00 hours to 18:00 hours Mondays to Saturdays and 10:00 hours to 16:00 hours on Sundays, Bank or Public Holidays.
- 12) No external storage of any materials or waste shall take place at any time.
- 13) No external lighting or floodlighting shall be installed other than with the permission of the Local Planning Authority by way of formal application.