



Appeal Decision

Site visit made on 29 October 2019

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal Ref: APP/B3030/W/19/3233879

Lowdham Cars, Lowdham Road, Gunthorpe NG14 7ES

- 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 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Melanie Hibbitt (Lowdham Cars) against the decision of Newark & Sherwood District Council.
 - The application Ref 19/00814/FUL, dated 15 April 2019, was refused by notice dated 4 July 2019.
 - The application sought planning permission for the installation of engineering operations for site drainage, change of use of the land from Car Sales to Car Sales and Car Wash, and the erection of fencing without complying with conditions attached to planning permission Ref 18/01465/FUL, dated 3 October 2018.
 - The conditions in dispute are Nos 2 and 7 which state that:
"Condition 2 – The development hereby permitted shall not be carried out except in complete accordance with the following approved plans reference:
 - *Site Location and Block Plans – 372(02) S10*
 - *Revised Proposed Site Plan - 372(08)S10 REVISION D (03.09.2018)*
 - *Surface Water Layout Plan*
 - *Drainage Layout**unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the permission."*
"Condition 7 – There shall be no more than 50 vehicles for sale displayed on the premises at any time unless otherwise approved in writing by the Local Planning Authority."
 - The reasons given for the conditions are:
"Condition 2 – So as to define this permission."
"Condition 7 – To ensure that the site remains in a tidy condition and there is adequate customer and staff parking areas and to protect the openness of the Green Belt."
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Decision

1. The appeal is allowed and planning permission is granted for the installation of engineering operations for site drainage, change of use of the land from Car Sales to Car Sales and Car Wash, and the erection of fencing at Lowdham Cars, Lowdham Road, Gunthorpe NG14 7ES in accordance with the application Ref 19/00814/FUL made on the 15 April 2019 without complying with condition Nos 2 and 7 set out in planning permission Ref 18/01465/FUL granted on 3 October 2018 by the Newark & Sherwood District Council, but otherwise subject to conditions in the attached schedule.

Procedural matters

2. This appeal relates to conditions forming part of planning permission 18/01465/FUL which was granted on 3 October 2018, but which in turn related to conditions attached to permission reference 18/00279/FUL, granted on 4 July 2018. I have therefore referred to the original substantive development in my decision to allow the appeal, so as to provide appropriate context for the new permission.
3. On the basis that more than 50 cars are already being displayed for sale on the site, the use of the site in breach of Condition 7 has already commenced and section 73A of the 1990 Town and Country Planning Act applies. I have therefore dealt with the appeal on this basis.

Background and Main Issue

4. The appeal site is a car sales garage and car wash located on the busy A6097 road, and which is situated within the Nottinghamshire—Derby Green Belt. In July 2018 planning permission (Ref 18/00279/FUL – ‘the July 2018 permission’) was granted for the change of use of the site from car sales to car sales and car wash and the erection of fencing, as well as retrospectively for the installation of engineering operations for site drainage related to the car wash. Condition 7 attached to this permission limited to 30 the number of cars which could be displayed for sale on the site.
5. The subsequent planning permission granted in October 2018 (Ref 18/01465/FUL – ‘the October 2018 permission’) varied Condition 7 so that up to 50 cars could be displayed for sale. Other conditions attached to the July 2018 permission which had already been discharged or were otherwise no longer relevant were amended or removed accordingly.
6. The current proposal is to remove altogether the restriction on the number of cars which can be displayed for sale on the site by removing Condition 7 of the October 2018 permission. A consequential amendment to Condition 2 would be required to update the specified approved plans only if Condition 7 were to be removed, as there would then no longer be a requirement for marked bays for car sales within the site.
7. The reason given for Condition 7 on both earlier permissions is ‘to ensure that the site remains in a tidy condition and there is adequate customer and staff parking areas and to protect the openness of the Green Belt’. The use of the site for car sales and a car wash, with up to 50 cars allowed to be displayed for sale, is of course already allowed by the existing planning permission and is therefore a fallback position to which I attribute significant weight.
8. Taking this into account, I consider that the main issue is therefore whether the restriction on the number of cars which can be offered for sale imposed by Condition 7 is reasonable and necessary, with regard to the effect of the development on the openness and character of the Green Belt.

Reasons

9. The appeal site is located to the east side of Lowdham Road outside the built-up area of Gunthorpe within a ribbon of mixed development washed over by the Green Belt. Spatial Policy 4B of the 2019 Newark & Sherwood Amended Core Strategy (the ACS) indicates that development proposals in the Green

Belt which are not specifically identified in that policy will be assessed against national Green Belt policy.

10. Paragraph 133 of the National Planning Policy Framework (the Framework) indicates that openness is an essential characteristic of the Green Belt, and can be considered as meaning an absence of built development. Paragraph 143 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 regards the construction of new buildings within the Green Belt as inappropriate, and by definition harmful to the Green Belt, with the exception of six listed circumstances, one of which is the partial or complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development.
11. The Council's appeal statement does not contend that the use of the site for car sales is in itself an inappropriate use within the Green Belt, given that it represents the partial redevelopment of a previously developed site. It is however argued that allowing an unrestricted number of vehicles to be displayed for sale would result in an over-intensive and poorly designed use of the site which would have a detrimental visual impact on the character of the area and the openness of the Green Belt, and therefore does not benefit from the exception set out in paragraph 145 of the Framework.
12. The existing buildings on the site, as well as its use for the display of cars for sale, mean that it does not at present have an open character. The permission being sought would not result in any additional buildings being erected, nor would any further hardstanding areas be required. The increased number of cars permitted to be displayed for sale would be contained within the confines of the existing site, and achieved by increasing the density at which they were parked. This would mean vehicles would be closer together, but the operational need for cars to be moved and for customers to circulate around the site would put a practical limit on the number of cars which could be accommodated.
13. The garage sits alongside the busy A6097, from which views of the garage forecourt are restricted by houses along the road to the north, and hedgerows to the south. Most of the site's rear boundaries away from the main road are screened by trees and hedges, and so the site's overall contribution to the openness of the Green Belt is limited. The one exception to this is at its south eastern boundary, where a low fence allows relatively open views from the A6097 across the corner of the appeal site and the adjacent field towards the village of Gunthorpe. However, this part of the site is occupied by the car wash which is itself open in character, and this would not be affected by removing Condition 7.
14. The garage already displays more than 50 cars for sale, and at the time of my visit to the site I saw that there were more than 80 for sale within the forecourt as a whole. From my observations, there is likely to be little practical change in terms of the impact on the openness of the Green Belt caused by removing the restriction on the number of cars which can be displayed for sale on the site. Although vehicles would be parked closer together, the increased density of cars within the site boundary would be barely noticeable to most observers and so the openness of the Green Belt would not be harmed. As such, there would be no greater impact on the openness of the Green Belt than that arising from

the existing development. In more general terms, and for the same reasons, the area around the appeal site contains a number of other businesses selling various types of vehicles and removing the restriction on the number of cars which can be offered for sale within the existing area does not introduce a form of development which is over-intensive or visually harmful to the wider area.

15. Accordingly, I conclude that the restriction on the number of cars which can be offered for sale imposed by Condition 7 is not reasonable or necessary to ensure that the development is not inappropriate in terms of the Framework's requirements or those of Spatial Policy 4B of the ACS, nor is it necessary to prevent harm to the openness of the Green Belt and the other purposes of including land within it. Removing the condition would also not conflict with Core Policy 9 of the ACS, nor with Policy DM5 of the 2013 Newark & Sherwood Allocations and Development Management Development Plan Document, which together seek to ensure that development is of an appropriate scale and form in its context.
16. Having found that removal of the restriction imposed by Condition 7 would not lead to development being inappropriate in the Green Belt, or harmful to the character of the Green Belt including openness, it is not necessary for me to assess whether or not there are very special circumstances which would otherwise weigh in favour of the proposal.

Other matters

17. Concerns were raised by interested parties that allowing an increased number of vehicles to be displayed for sale could lead to increased problems arising from noise and flooding, and would have an adverse impact on highway safety. The evidence before me includes comments from the Council's Environmental Health team, the Lead Local Flood Authority, and the County Council's Highways Development Control Officer which do not indicate specific concern on any of these points. Accordingly, I consider that the proposal would not lead to unacceptable impacts relating to any of these matters.

Conditions

18. I have deleted the disputed Condition 7 as indicated above. I have also deleted Condition 2 in the October 2018 permission, and replaced it with an amended one which specifies new approved plans for the development allowed.
19. The Planning Practice Guidance indicates that, to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In this case, it is the conditions attached to the October 2018 permission which remain relevant.
20. With the exception of the standard time limit, which is no longer required as the development permitted has already been substantially implemented, I have no information before me to suggest that any of the other conditions are no longer necessary or relevant. I have therefore imposed all of the other conditions attached to the October 2018 permission, with only minor drafting modifications where this has been necessary.

Conclusion

21. For the reasons given above I conclude that the appeal should be allowed and planning permission granted, with Condition 2 varied and Condition 7 removed accordingly.

M Cryan

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location and Block Plans - 372(02) S10, Revised Proposed Site Plan - 372(08)S10 REVISION E (29.04.2019), Surface Water Layout Plan, Drainage Layout.
- 2) The fence hereby permitted shall be constructed in the materials specified in planning application Ref 18/00279/FUL.
- 3) Any contamination that is found when carrying out the approved development that was not previously identified shall be reported immediately to the local planning authority. Use of the car wash, and any other development on the part of the site affected, shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 4) No infiltration of surface water drainage into the ground where contamination is present (as identified within condition 3) is permitted other than with the written consent of the Local Planning Authority.
- 5) The vehicle sales and car wash premises shall only be open to the public between the hours of 08.30 am and 6pm.
- 6) There shall be no outside storage or paraphernalia associated with the car wash facility erected on the site.

End of schedule