

Application No: Y17/0944/SH

Location of Site: Land Adjoining 76-78 High Street Dymchurch Kent

Development: Change of use of the land to car sales in connection with the existing business.

Applicant: Mr Terry Peters
Dymchurch Car Centre
Land Adjoining 76-78
High Street
Dymchurch
Kent

Agent: Mr Tom Quaye
Design And Building Services
22 Eastbridge Road
Dymchurch
Kent
TN29 0PF

Date Valid: 01.08.17

Expiry Date: 26.09.17

Date of Committee: 28.11.17

Officer Contact: Miss Louise Daniels

RECOMMENDATION:

- a) That planning permission be refused for the reason set out at the end of this report.
- b) (1) That an enforcement notice be served requiring the unauthorised use of the land for the storage of vehicles to cease and all vehicles removed from the land together with the removal of associated fencing, hardstanding and any associated structures and the site returned to grass.
- (2) That the period of compliance be 6 (six) months.
- (3) That the Head of Planning be given delegated authority to determine the exact wording of the Notices.
- (4) That the Head of Democratic Services and Law be authorised to take such steps as are necessary, including legal proceedings to secure compliance with the Notices.

1.0 THE PROPOSAL

- 1.1 This application seeks permission for change of use of the land to car sales in connection with the existing business to the south of the application site. As part of this use, it is noted that associated fencing and hard standing, along with other structures, are sought to be retained. Lighting poles are located on the adjacent site and do not form part of this application.

2.0 LOCATION AND DESCRIPTION OF SITE

- 2.1 The application site is located within the settlement boundary of Dymchurch, situated in a visually prominent location on the main road through the village. The existing business is located to the south of the application site and is an existing car sales business, 'Fairways Garage'.
- 2.2 The site is immediately adjacent to the Conservation Area which runs along the northern and eastern boundaries of the site, is situated within Flood Zone 3a on the Environment Agency's flood risk maps and has a public footpath running along the northern boundary of the site.
- 2.3 Without the current unlawful use, the application site would be open and undeveloped, affording space between the car sales business to the south and the buildings within the conservation area to the north, as well as allowing views toward the conservation area to the east of the site. The grain of the built development is generally fairly tight-knit, although distances between the buildings on opposite sides of the street vary, as well as the building sizes, with junctions along the road also providing gaps. This is especially prominent here, at the application site, with the open area giving the street a sense of spaciousness and allowing appreciation of the conservation area beyond.

3.0 RELEVANT PLANNING HISTORY

- Y10/0238/SH - Change of use of land to display and retail use for the sale of sheds. Temporary permission granted 29.10.10. (Expired 29.10.13)
- Y11/1010/SH - Change of use of the land to car sales in connection with the existing business. Temporary permission granted 05.01.12. (Expired 05.01.15)

4.0 CONSULTATION RESPONSES

- 4.1 Dymchurch Parish Council
Object. The application be refused on the ground of detrimental visual impact on the village street scene.

4.2 KCC Highways and Transportation

Object. It appears that this application is a retrospective one as digital imagery already shows the site operating for car sales. Currently there is no boundary treatment between the site and the public highway and this will mean that vehicles parked at the front of the site are likely to be reversing from the public highway into the site over the full height kerb. This is unacceptable as there is no lawful means of access for these frontage sales spaces and the constant reversing of vehicles is a highway safety concern. A boundary treatment is therefore required between the site and the public highway to ensure that vehicles access the site from the existing lawful accesses serving the site.

4.3 Environmental Health

No objections to the granting of this planning application and no further comments.

4.4 Arboricultural Manager

No objections to the change of use of the land. There are no serious arboricultural or landscape constraints present.

4.5 K.C.C. (Planning - Archaeology)

No comment to make

5.0 PUBLICITY

5.1 Neighbours notified by letter. Expiry date 05.09.17

5.2 Site Notice. Expiry date 12.09.17

5.3 Press Notice. Expiry date 14.09.17

6.0 REPRESENTATIONS

6.1 1 representation received objecting on the following grounds:

- Noise disturbance to neighbouring properties from alarms and lighting.
- Passing cars often stop on the yellow lines to view the cars for sale causing road safety issues.
- The business moves the cars over the public footpath onto the road.
- The garage business was once in proportion to the village before it expanded.

7.0 RELEVANT POLICY GUIDANCE

7.1 The full headings for the policies are attached to the schedule of planning matters at Appendix 1.

7.2 The following policies of the Shepway District Local Plan Review apply:
SD1, BE1, BE4, BE13, TR11, TR12

7.3 The following policies of the Shepway Local Plan Core Strategy apply:
DSD, SS3

7.4 The following Supplementary Planning Documents and Government Guidance apply:

National Planning Policy Framework:
Section 12 - Conserving and enhancing the historic environment.
National Planning Policy Guidance
Kent Design Guide

8.0 APPRAISAL

Background

8.1 A temporary 3 year permission was previously granted under application reference Y10/0238/SH for the change of use of the land to display sheds for sale. As part of the temporary approval, a planted earth bund along the western boundary of the site with the A259 was required by condition in order to provide screening. Although the use of the site was considered to have a negative impact upon the setting of the Conservation Area, members felt that a temporary permission, with the landscaping provision secured via condition, would be an appropriate compromise. However, the permission was never implemented and so the planted earth bund was never created.

8.2 The site later received a temporary 3 year permission under application Y11/1010/SH for use of the land for the sale of cars in connection with the existing business to the south of the site. At the time of considering the application, the Y10/0238/SH permission for the display of sheds was extant and it was considered that this fall-back position, together with the proposed screening and landscaping were material considerations and, temporary permission should be granted. This temporary permission expired on 05/01/14 when the use was required to cease and the land returned to its former condition. However, the use has continued, without the required screening, and this current application seeks to regularise the use of the site.

Relevant Material Planning Considerations

8.3 The main issues in the assessment of this application are the visual impact of the development with regard to the preservation and enhancement of the adjacent Conservation Area, the visual impact upon the street scene, any economic considerations, the impact of the use on the amenities of neighbouring occupiers, the location of the development within an area identified as being at risk of flooding and highway safety considerations.

Visual Amenity

8.4 The application site is immediately adjacent to the Dymchurch Conservation Area which runs along the northern and eastern boundaries of the site. It is considered to be valuable in terms of visual amenity, as it previously

provided an open space and visual break in the urban form at this juncture in the street scene, offering a buffer between the commercial premises further along the High Street to the south, which can be identified as the 'centre' of the village, and the residential area to the north of the High Street.

- 8.5 There is currently a proliferation of vehicles stored on the site, with vehicles positioned along the western boundary facing the High Street (A259), and associated paraphernalia such as signage and fencing within the application site. This ongoing and permanent use of the site for the sale of vehicles is not considered to contribute positively to the setting of the adjacent Conservation Area or the street scene, since the visual clutter from the cars disrupts the open feel and is highly visible from the public highway as well as the adjoining public footpath to the north of the site, which has been separated from the application site with temporary wiremesh fencing attached to posts.
- 8.6 The previous temporary permission for the sale of sheds has long-expired, so there is no longer this fall-back position, whilst the subsequent temporary permission for the use for car sales has also expired. Given that the site is in a visually prominent and sensitive location in the streetscene, without any screening proposed, the retrospective provision of which is considered highly unlikely to ameliorate the significant negative visual impact from the storage of cars, the continued use of this site is considered detrimental to the open character of the street scene and the setting of the adjacent conservation area..

Neighbouring Amenity

- 8.7 The application site is situated to the north of the Dymchurch village centre, directly adjoins a car sales/workshop with frequent movements in and out of the site by motor vehicles and also fronts the busy A259 High Street. It is considered that the use would not lead to significantly greater noise and disturbance than the existing site to the south given the predominantly stationary nature of the vehicles, other than when they are being put into position for display.
- 8.8 The application states the opening times would be 0900 hours to 1700 hours on Mondays to Saturdays and 0900 hours to 1200 on Sundays and Bank Holidays (appointment only). These are considered reasonable opening hours in this relatively busy location and Environmental Health also raise no objection to the hours of use.
- 8.9 The use of the site does not involve the construction of any buildings so the use is highly unlikely to lead to loss of privacy, overshadowing, or an overbearing/enclosing presence for neighbouring uses. It is however considered appropriate to restrict the erection of lighting or any PA systems by condition if recommended for approval.

Highways

- 8.10 Policy TR11 of the Shepway District Local Plan Review states that the formation of a new access will only be permitted where the access is not

detrimental to the safety of vehicle traffic, cyclists and pedestrians or where the access can be improved to a standard acceptable to the Highway Authority. No boundary treatment or barrier is currently in place or proposed between the site and the public highway to the west of the site. Consequently, given the dense arrangement of vehicles at the site and considering no access is included within the red line on the submitted site location plan, the vehicles parked at the front of the site are likely to be reversing from the public highway into the site over the full height kerb, with neighbour comments suggesting that this is the case.

- 8.11 In the absence of an alternative access and lack of barrier or boundary treatment to the west of the site between the site and the public highway, it is considered that to continue to allow vehicles to enter and exit the site from the public highway would have an unacceptable and detrimental to highway safety contrary to saved policy TR11 of the Shepway District Local Plan Review.

Flooding/Drainage

- 8.12 The application site is in close proximity to the seawall and is located within Flood Zone 3a as identified on the Environment Agency flood risk maps and in an area of significant risk should flooding occur, as identified by the Council's Strategic Flood Risk Assessment. Officers have referred to the Environment Agency's flood risk standing advice (FRSA) which states the sequential test is not required to be carried out, as it is a change of use application. Consequently, overall, there is considered to be no likely increase in flood risk or likely damage to property or life as a result of the continued use of the land for car sales.

- 8.13 Southern Water previously requested details of surface water drainage, and as the site has been covered in hard standing in the form of compacted hardcore, should the application be approved, these details would need to be conditioned.

Economic Development/Employment

- 8.14 The use of the site is for the display of cars in connection with an existing business and the existing buildings on the adjacent site are not proposed to be enlarged as part of this application. The application form states that there is one full-time and three part-time members of staff employed with the current business and the application form states that the numbers would remain the same. Consequently, there is little weight attached to the creation of jobs.

Other Issues

- 8.15 No lighting is proposed as part of this application and any disturbance from the lighting poles on the adjacent site will need to be investigated separately by the Council's Environmental Health Team.

Human Rights

- 8.16 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.
- 8.17 This application is reported to Committee due to the officer recommendation and enforcement procedures which would be required.

9.0 SUMMARY

- 9.1 The application site is considered to be valuable in terms of its visual amenity as it previously provided an open space and visual break in the urban form within the street scene and buffering between the commercial premises to the south and the residential areas to the north, as well as allowing appreciation of the adjacent conservation area.
- 9.2 The continued and permanent use of the site for the sale of vehicles is considered to be detrimental to the setting of the Conservation Area and the character of the street scene as the visual clutter of the densely parked vehicles is highly visible from the public highway to the west and from the adjoining public footpath to the north of the site.
- 9.3 Furthermore, as there is no boundary treatment proposed between the application site and the public highway (A259) to the west to prevent vehicles from entering and exiting the site from this location, it is considered that the continued use of the application site would perpetuate an unacceptable and detrimental impact on highway safety.

10.0 BACKGROUND DOCUMENTS

- 10.1 The consultation responses set out at Section 4.0 and any representations at Section 6.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

RECOMMENDATION:

- a) That planning permission be refused for the following reasons:
- (1) The continued use of the site for the storage and sale of vehicles would result in permanent visual clutter and the removal of the visual break and green buffering in the urban form within the street scene so as to be detrimental to the open character of the street scene and the

setting of the adjacent conservation area, contrary to the aims of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 131 of the National Planning Policy Framework and saved Policy BE4 of the Shepway District Local Plan Review, which seek to sustain and enhance the significance of heritage assets such as Conservation Areas, as well as the contribution made to their significance by their setting.

- (2) The continued use of the site for the storage and sale of vehicles would, in the absence of boundary treatment between the application site and the public highway of the A259 to the west, perpetuate access and egress to the site directly from the A259 without a suitable vehicular access in place resulting in an unacceptable and detrimental impact on highway safety contrary to saved policy TR11 of the Shepway District Local Plan Review, which seeks to ensure that development of land is not detrimental to the safety of vehicle traffic, cyclists and pedestrians.
- b) (1) That an enforcement notice be served requiring the site to be cleared of vehicles, fencing and any other associated structures and the grass to be reinstated.
- (2) That the period of compliance be 6 (six) months.
 - (3) That the Head of Democratic Services and Law be authorised to take such steps as are necessary, including legal proceedings to secure compliance with the Notices.
 - (4) That the Head of Planning be given delegated authority to determine the exact wording of the Notices.

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