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Your Ref: PL/2023/04973
Our Ref: APP/Y3940/W/24/3347505

16 December 2024

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mr Michael Lindsey
Site Address: Top Yard Malmesbury Road, Leigh, SWINDON, SN6 6RH

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure.

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Bridget Holden
Bridget Holden

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The Planning Inspectorate

Appeal Decision

Site visit made on 8 November 2024

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th December 2024

Appeal Ref: APP/Y3940/W/24/3347505
Top Yard, Malmesbury Road, Leigh, Wiltshire, SN6 6RH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Michael Lindsey against the decision of Wiltshire Council.
- The application Ref is PL/2023/04973.
- The development is described as flexible use of existing building for the storage of lorries & trailers & operations ancillary to that use (the permitted use) and/or the repair & restoration of cars.

Decision

1. The appeal is allowed and planning permission is granted for use of land and building for lorry/trailer parking and car repairs and restoration at Top Yard, Malmesbury Road, Leigh, Wiltshire, SN6 6RH in accordance with the terms of the application, Ref PL/2023/04973, subject to the conditions set out in the attached Schedule.

Preliminary matters

2. The Council officer report on the application includes an analysis of the planning history[1], the site's lawful uses, the nature of the current uses on the site, and what the appellant seeks.

3. I share the Council's view of matters on most aspects. First, that the application relates to the whole of the site marked with a red line on the application plan, and not merely to the building; second, that the current lawful use of the land and building appears to be for the storage of 5 lorries and 2 trailers – in this respect I do not share the appellant's view that the history establishes an independent B2 use of the site - any such use at the site is required to be ancillary to the lawful use; third, that the car repair and restoration business falls to be considered as a B2 use; finally, having regard to that seen during my visit in terms of facilities, machinery and equipment, the business occupying the building appears to be capable of conducting most of the services advertised on its website.

4. The activities of the business occupying the building are inexorably linked to the land surrounding it – including for access, parking and storage. The land is also used for its lawful use for storing lorries and trailers from time to time, although there was no evidence of this during my visit. The original application

[1] Including an appeal decision: Ref APP/Y3940/W/18/3210915 dated 31 May 2019 concerned with change of use of existing building and land to use for storage purposes (Class B8 Use) and/or the parking of a maximum of 5 HGVs and 2 trailers.

was principally directed to retaining the existing uses. I have therefore dealt with the application on this basis[2] and for the sake of clarity suggested a revised description to the principal parties. The appellant has agreed to the revised description, whilst the Council has not demurred. Therefore, the revised description of the development is used in the banner heading above.

5. The appeal is not concerned with any physical modifications carried out to the building since none were requested. However, I am given to understand from the officer report that the building standing on the site is consented *'to be enclosed on three sides and open on the fourth.'* All four sides are now enclosed.

Main issues

6. The main issues are: (a) whether this is an appropriate location for the uses having regard to development plan policy and, (b) the effects on the character and appearance of the surrounding area.

Reasons

Location

7. Although some residential uses are evident in the locality, the site is physically unrelated to any clearly defined settlement and the surrounding uses are principally agricultural. The site, although developed, clearly lies in countryside both physically and for policy purposes.

8. Core Policies (CP) 1 & 2 of the Wiltshire Core Strategy (CS) deal respectively with settlement strategy and delivery strategy for the County. The policies set out the Council's spatial strategy and distribution of growth, and provide that development will be focused in settlements within defined settlement boundaries or allocated land.

9. Policies CP 60 & 61 are directed to sustainable transport and the means of achieving it in new development. In essence, new development should be located and designed to reduce the need to travel by car and to encourage the use of sustainable transport alternatives.

10. The Council considers the use to conflict with these policies which are designed to direct or encourage B2 businesses to established centres. However, the Council acknowledges that policies CP34 & CP48 also fall to be considered since they both recognise the potential for employment opportunities to arise outside established centres in rural locations. Both policies are qualified in the sense that they are criteria based. I share the Council's view, for the same reasons, that the B2 use subject of appeal fails to meet all the requirements of policy CP34.

11. CP policy 48 is directed to supporting rural life in several ways. It includes a permissive provision in respect of proposals to convert and re-use rural buildings for a variety of uses, including employment. The appeal is principally concerned with a re-used rural building providing employment opportunities – it therefore falls plainly within the policy's provisions. However, the policy requires several criteria to be satisfied.

[2] That is, under section 73A of the Town & Country Planning Act 1990 (as amended)

12. The Inspector conducting the previous appeal acknowledged the relevance of CP policy 48 but concluded that: '*there is little before me to demonstrate that this criteria (sic) has been met.'* I have not been made aware of what evidence was before my colleague more than 5 years ago, but there is an implicit requirement to examine all the criteria in turn.

13. In this respect the Council is satisfied, as am I, that criteria (i) and (iii) relating to structural soundness, adaptability, adequacy of access and infrastructure are met. Criterion (ii) is concerned with effect on landscape and amenity considerations, a matter dealt with under the next main issue.

14. Criterion (iv) requires the site to have reasonable access to local services. I have noted the Council's view on this and those of the previous Inspector. However, neither the criterion nor the explanatory text offers an explanation or definition as to what is meant by the phrase '*reasonable access'*.

15. The policy is concerned with the re-use of rural buildings, and unlike CP policy 34, does not impose geographical or locational limitations. That is, rural building generally stand in rural surroundings and, as such, I would not expect sites considered under this policy to be served with, for example, lit footways or that users or employees would necessarily be able to walk or cycle conveniently to and from them or to local services.

16. Rural buildings also tend not to be close to services or directly served by them, a factor which the authors of the policy would surely have been aware. A range of services are available in Cricklade, a settlement designated under the terms of policy CP1 as a Local Service Centre – it is about 2 miles or 5 minutes away by car. To my mind, it is reasonably accessible bearing in mind the Framework's[3] acknowledgment that the opportunities to maximize sustainable transport solutions will very between urban and rural areas. I note that the Cricklade Town Council commented on the application which indicates that it considers the site to be within the Town's sphere of influence.

17. Another factor is the nature of the principal use. In this regard cars would need to be driven to the site or indeed to any other repair facility, whether situated in a settlement or in a rural area. It is also reasonably clear from the numerous representations made that local people use the facility, thus negating the need for longer journeys elsewhere. The restoration aspect of the business means that frequent journeys need not arise – since cars would be left at the site for days, sometimes weeks, whilst being repaired or restored.

18. I recognize a measure of tension between CS policy CP48 and CP1 & CP2, but to my mind the former policy is designed to be directed to circumstances where exceptions to the strategic policies may be warranted. Having regard to the foregoing, I conclude that the use of the building satisfies policy CP48's criteria, apart from criterion (ii), which is dealt with next.

Character and appearance

19. Although originally built for agricultural purposes, the building appears to be of relatively recent origin and modern construction. It has planning permission to be retained, albeit that does not apply to the enclosure of the fourth side elevation. It is sited fairly close to the hedge fronting the highway, with its

[3] National Planning Policy Framework 2024, paragraph 110

gable apparent above the hedge when viewed from close quarters. Not dissimilar buildings are apparent along the length of Malmesbury Road.

20. I visited when considerable defoliation had taken place but even so I did not find the building prominent in the wider agrarian landscape. This was because views of it are largely screened or masked by hedges, trees and other vegetation when approaching from either direction along Malmesbury Road. The building and land can be seen from directly outside the site through the access point and through gaps in the hedge, although it is unlikely, given the absence of footways, that many pedestrians would venture along the main road.

21. I am satisfied however that the visual barrier which the hedge presents could be strengthened by additional planting and landscaping, accompanied by a management plan to secure its future well-being. This would be effective in ensuring that no harm would arise to the appearance of the locality or the landscape generally.

22. The nature of the B2 has altered the character of the site. In this regard, many local residents and the Parish Council have submitted representations, but many are conflicting as to the effect of the B2 use on local character and amenities. To my mind many of the concerns expressed would be satisfactorily addressed with appropriate safeguards in the form of conditions so that the effect on local character could be acceptably mitigated to the extent that the continuation of the B2 use would not prove harmful. I note too that the Council did not consider that the living conditions of any local resident would be harmed. With appropriate safeguards, I share the Council view on this aspect.

23. I conclude that with appropriate safeguards, the continuation of the uses would not harm the character and appearance of the locality. Accordingly, I find no material conflict with the provisions of criterion (ii) of CS policy CP48 or CP51 designed to protect local landscapes.

Conditions

24. The Council suggested the imposition of 2 conditions in the event of the appeal being allowed. I did not consider that to be sufficient to ensure that the uses could continue acceptably. Accordingly, a list of possible draft conditions was circulated to the principal parties to be imposed in the event of the appeal succeeding. Neither of the parties objected to the draft conditions.

25. Condition 2 is framed in this form since the uses have already commenced. Its effect is to ensure that details of various matters are required to be submitted within a set timescale, otherwise the B2 use shall cease. The details required include planting, landscaping, lighting, parking, external storage and biodiversity. This condition is imposed in the interests of safeguarding the landscape and local amenity.

26. A condition is imposed in relation to opening hours so that noise and other activity does not disturb local residents, especially at night and at week-ends.

27. To maintain what I regard as the low-key nature of the uses, limitations are placed on the number of vehicles that may be kept at the site. Since the site is used principally for car restoration where car journeys to and from the site are relatively low, a condition is imposed restricting the use permitted to that

applied for. So that use does not intensify, an additional condition is imposed removing permitted development rights in respect of any future extension proposal.

28. In the interests of visual amenity a condition is directed to ensure that external parking and storage only takes place in the designated areas to be approved as a detail under the terms of condition 2.

Other matters

29. The representations of the Parish Council and local residents are also noted, as is the petition, and I have already dealt with the main planning points raised. With regard to the alleged use of the public highway for testing, the representations are conflicting in their nature. However, should any party act illegally on the highway they are open to prosecution.

30. All other matters referred to in the representations, including the various references to the Framework (2023) have been taken into account. The Framework has since been revised, but the thrust of the points raised remain relevant notwithstanding the revisions. No other matter is of such strength or significance as to outweigh the considerations that led me to my conclusions.

G Powys Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted relates to the following approved plans: the OS location plan and site plan.

2. The use of the land and building for car restoration and repairs shall cease and all equipment and materials brought onto the land and building for the purposes of such use shall be removed within 42 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

   i) Within 4 months of the date of this decision details in respect of the matters set out in (a) to (g) below shall have been submitted for the written approval of the local planning authority including a timetable for implementation.

   (a) details for the storage, recycling and disposal of waste materials, including oils; (b) details of external car, lorry and trailer parking parking; (c) details of toilet facilities and drainage; (d) details and management plan for the protection, enhancement and long-term retention of the hedge fronting the site; (e) details of external lighting; (f) details of measures for biodiversity gain; (g) a scheme of landscaping and proposals for its future management.

   ii) If within 10 months of the date of this decision the local planning authority refuse to approve the details or fail to give a decision within the

prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved details shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved details specified in this condition, all shall thereafter be managed, retained and/or remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3. The use for car restoration and repairs hereby permitted shall only take place between the following hours:

   07.30 – 19.00 Mondays - Fridays
   07.30 – 13.00 Saturdays
   At no time on Sundays and Bank or Public holidays.

   No machinery or noisy activity shall be operated or carried out on the land or building outside these specified hours.

4. No more than 5 lorries or trailers shall be parked or stored on the land at any one time.

5. No more than 20 cars shall be parked or kept on the land and within the building at any one time.

6. The building shall be used for car restoration and repairs and for no other purpose (including any other purpose in Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

7. No external storage or parking shall take place on land other than in the areas approved under the terms of condition 2 above, and no restoration or repair of cars shall take place outside the building.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the building shall not be extended or altered.