



Appeal Decision

Hearing Held on 15 June 2021

Site Visit made on 16 June 2021

by Helen Hockenhull BA (Hons) B. PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/E2734/W/20/3254251

Former 1st Dental Laboratories, 112 Wetherby Road, Harrogate, HG2 7AB

- 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 Euro Garages Limited against the decision of Harrogate Borough Council.
 - The application Ref 19/02171/FUL, dated 11 April 2019, was refused by notice dated 16 December 2019.
 - The development proposed is the demolition of existing building and erection of a coffee shop to include a drive thru, car parking, access and landscaping.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building and erection of a coffee shop to include a drive thru, car parking, access and landscaping at the former 1st Dental Laboratories, 112 Wetherby Road, Harrogate, HG2 7AB in accordance with the terms of the application, Ref 19/02171/FUL, dated 11 April 2019, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Euro Garages Ltd against Harrogate Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. Before the hearing took place, the Council took the decision not to defend its reasons for refusal and presented no evidence at the event. They did however take part in discussions regarding potential conditions should the appeal be allowed. I have therefore determined the appeal on the basis of the appellant's evidence, interested parties' evidence, the discussions at the hearing and my own observations on site.
4. Since the original application was determined, the Council has adopted the Harrogate District Local Plan 2014-2035. I have had regard to these policies in making my decision.

Main Issues

5. The main issues in this case are
 - the effect of the development on highway safety;
 - the effect of the development on air quality;

- the effect of the proposal on the living conditions of the occupants of nearby residences, with particular regard to noise and light pollution.

Reasons

Highway safety

6. Having regard to everything I have read and heard, the main highway issues relate to the capacity of Wetherby Road and the safety of right turning movements into and out of the appeal site.
7. In support of their case, the appellant relies on a Transport Assessment (TA) prepared in 2016 which accompanied a previous application for the same use on the appeal site, (Planning application ref 17/00729/FUL). This earlier scheme was also the subject of an appeal where highway issues were discussed. The Inspector who determined that case, concluded that the proposal would not cause highway safety issues, though the appeal was dismissed for other reasons. Whilst the previous appeal decision forms a material consideration in this case, I have undertaken my own assessment.
8. Recognising that the TA was prepared some time ago, the appellant has provided a Technical Note to accompany the current appeal to update the position. The TA concludes that there would be around 40-45 vehicle movements each way during the peak hours, equating to around two vehicle movements every three minutes, either arriving or departing the site in the peak period. The current proposal would have a gross floor area, around 40% lower than the previous proposal. With a scheme of the nature proposed, it would not be appropriate to suggest that traffic generation would also be 40% lower. However, it would be fair to say that trip generation would indeed be less than that indicated in the TA.
9. Traffic data in the TA was based on information collected in 2016. Since then the Department for Transport (DfT) has published survey data from 2018 which indicates that annual average daily traffic flows on the section of Wetherby Road immediately in front of the appeal site, have reduced from 24,992 to 22,289 vehicles, approximately 11% reduction. In light of the above, I agree with the appellant that the TA is robust and represents a worst-case scenario.
10. It is accepted by all parties that the junction of Wetherby Road, Hookstone Drive and Hookstone Chase, known locally as the Woodlands junction, operates at over capacity and at peak times traffic moves slowly with queuing on Wetherby Road extending back a considerable distance. I saw this on my site visit. I also observed some queuing, albeit to a lesser extent in off peak hours.
11. The appellant has estimated that around 80% of the trips to the proposed drive thru would be from passing traffic, vehicles already on the highway, with approximately 20% forming new trips. These figures are supported by evidence in the TA of other approved assessments for similar proposals. The TA concludes that the longest average queue lengths would increase by one additional vehicle at peak times. This level of increase would not have a severe impact upon capacity. Whilst it would marginally add to congestion, this would not be a highway safety issue.

12. The existing access into the site is to be closed off and a new access provided further away from the traffic light junction with keep clear markings provided. The scheme includes the widening of Wetherby Road so that a new right turn lane can be provided. Modelling indicates that the lane, which would accommodate up to 4 vehicles, would be long enough to prevent vehicles overflowing into through lanes.
13. I note that the right turn lane is located at a point where the two through lanes merge, creating a single lane. Bearing in mind the 4-vehicle length of the right turn lane, I am not persuaded that this situation would cause a highway safety issue. I note that a Road Safety Audit found no highway safety issues in this regard.
14. The proposed keep clear markings would facilitate vehicles turning right into the appeal site. I am aware of concerns that keep clear markings are ignored by drivers. Whilst I did observe this to be the case at the existing site access, this was only very occasionally and my perception was that in the main, the markings were respected. Should the gap in the traffic created by the keep clear markings effect the MOVA traffic system, I am satisfied that this could be resolved by the repositioning of the sensors.
15. Vehicles turning right out of the site would most likely have to wait for gaps in the north bound traffic flows provided by the operation of the traffic lights. This would require crossing two lanes of southbound traffic using the keep clear box. I accept that one of the two lanes may have stationary traffic but the other may still be moving. I experienced this on my site visit as I turned right out of the pub car park next to the appeal site.
16. As with any manoeuvre, drivers turning right and crossing two lanes of traffic would need to take care. However, traffic speeds would be reducing on the approach to the traffic lights and visibility emerging from the keep clear markings would be good in both directions. It is clear from my observations that similar right turning movements from other commercial premises along this stretch of Wetherby Road currently take place. Indeed, this is the case with the existing access to the site. I also note that accident data shows accidents at the junction itself not in the vicinity of the appeal site. Given the above, I am satisfied that the right turn arrangement would be acceptable in highway safety terms.
17. I have carefully considered concerns raised about the effect of the proposed highway works on right turning movements from the driveway to No. 141 Wetherby Road. I acknowledge that this manoeuvre is already difficult particularly at peak times. The key consideration for me in this appeal is whether the proposal would make this any worse. The introduction of the right turn pocket would provide a larger area in the centre of the road than the current diagonal hatched area for a right turning vehicle, reducing the risk of side swipes. Furthermore, bearing in mind the likely number of vehicles turning right into the site, estimated as less than 1 vehicle every two minutes, queuing should not be a continuous feature at the right turn pocket. Turning right out of the adjacent residential property should therefore be no more difficult.
18. The widening of the road to facilitate the right turn pocket would reduce the width of the pavement next to the appeal site. However, it would be maintained at 2 metres which would be adequate for users. The scheme also

proposes the provision of a pedestrian refuge to the south of the site which would facilitate pedestrian crossing movements.

19. The proposed drive thru would have a total of 21 on site car parking spaces for both staff and customers. This is adequate, meeting the Council's car parking standards. Cycle parking stands would also be installed as part of the proposal.
20. Residents have brought my attention to a recent accident at the Woodlands junction which tragically resulted in a fatality which does not yet feature in accident data. I have been provided with an email from the Highway Authority which advises that this took place on the outbound carriageway at the traffic light junction and that this accident would have no connection with future traffic from the proposed coffee shop.
21. The National Planning Policy Framework (the Framework) in paragraph 109 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. Based on the evidence before me and on my observations, I am not persuaded that the appeal scheme would adversely effect highway safety or have a severe impact on the highway network. The proposal would therefore comply with the Framework in this regard.
22. It would also accord with Policy TI1 of the adopted Harrogate Local Plan. This policy seeks to promote sustainable travel and provide a transport system which is safe, reliable and convenient. Additionally, the development would comply with Policy TI13 which seeks to achieve adequate parking provision for cars, cycles and motorcycles.

Air quality

23. The appeal site is located adjacent to the Air Quality Management Area (AQMA) on Wetherby Road. The AQMA was designated due to exceedances of the annual mean objective for nitrogen dioxide (NO₂).
24. The appellant has submitted an Air Quality Assessment. This uses air quality data for the base year of 2017 and considers 11 receptors on Wetherby Road in the vicinity of the appeal site. It predicts that the development would result in less than 0.5% increase in NO₂ and other particulates which is described as negligible. The assessment does not take account of national air quality improvements or the 11% decrease in traffic on the local highway network as indicated in the 2018 DfT survey referred to above. It therefore represents a worst-case scenario and is robust.
25. Concerns have been raised that increased congestion generated by the development, resulting in stationary or slow-moving traffic, would cause a decline in air quality. However as already discussed above, the appellants TA has indicated that queuing on the road would only be marginally increased. I am advised that the Council's 2019 air quality monitoring report shows that concentrations have reduced in all locations with no exceedances. Bearing in mind the improving picture in respect of air quality, and the very low increase in NO₂ predicted, I am satisfied that the scheme would not have an unacceptable impact on air quality.
26. The impact of idling vehicles in the drive thru lane in terms of air quality for nearby residents has also been assessed in the appellant's Air Quality

Assessment. It is predicted that the operation of the site would result in NO₂ levels of 14 mg, well below the objective limit of 40 mg. The assessment does not take account of the proposed acoustic fencing which would disrupt air flow or that the prevailing wind is westerly, so that residential properties are located upwind of the site. The appellant advises the intention to install 'no engine idling' signs at the entrance to the drive thru lane encouraging customers to use start/stop technology or turn off engines whilst stationary. These measures would assist to reduce the impact on air quality. Given the above, I conclude that the scheme would not cause harm to the amenity of nearby residents because of decreased air quality.

27. Where an air quality impact is predicted, both national and local air quality guidance suggest the use of a damage cost calculation to provide a basis for quantifying the financial commitment required to offset potential development generated vehicle emissions. In this case, the appellant proposes to install electric vehicle charging infrastructure at the site. The cost of this installation would more than offset the damage cost calculation. I am satisfied that this is an appropriate way to offset the minimal impact on air quality predicted as a result of the development.
28. Third parties have raised concern about the effects of air pollution on employees of the drive thru. I am not been made aware of any national guidance in this regard and I have been presented with no evidence to show that there would be any unacceptable impacts. Operational management measures could address this issue, for example regular breaks for employees.
29. In summary, given the above, I conclude that the appeal scheme would not have an unacceptable effect on air quality. I find no conflict with Policy HP4 of the Harrogate District Local Plan which seeks to ensure that significant adverse impacts resulting from fumes and poor air quality, do not impact on the amenity of neighbours and occupiers.

Living conditions

30. The closest residential properties to the appeal site are located on Coachman's Court and Masham Road. Most affected are Nos 5 and 7 Coachman's Court which are located on the site boundaries close to the drive thru lane.
31. In order to assess noise impact, the appellant has prepared a noise assessment. The assessment assumes peak vehicle movements on the site and assesses all noise sources associated with the development including intermittent noise such as car doors closing.
32. The assessment demonstrated that intermittent noise was generated from the nearby public house in the evening eg cars doors shutting as customers leave. It also demonstrated noise from the petrol filling station on Wetherby Road during lulls in traffic. This provides some context for the appeal site with other existing noise sources in the area. BS4142¹, which provides guidance on undertaking noise assessments, indicates that context should be considered.
33. The assessment concludes that in the peak daytime, noise levels would not exceed existing background noise. In the evening however, when the traffic noise on Wetherby Road is lower, the assessment predicted that there would

¹ BS4142: 2014 Methods for rating and assessing industrial and commercial sound.

be an increase in noise at receptors on Coachman's Court. When considering context, in accordance with BS4142, the assessment concludes that noise from the development would have a low impact.

34. I agree with the appellant's assessment that in accordance with Planning Practice Guidance (PPG) and the Noise Policy Statement for England, the predicted level of increase would be below the Lowest Observed Adverse Effect Level (LOAE). This level means that noise may be heard on occasion though would be unlikely to cause any change in behaviour or attitude such as shutting windows or increasing the volume of the television.
35. The appellant proposes that the drive thru would operate between the hours of 7am and 10pm. I consider the evening closure time to be reasonable, being one hour earlier than that of the nearby public house.
36. It is proposed that a 2-metre-high acoustic fence be installed on the boundary of the drive thru lane. An area of landscaping would lie between the acoustic fence and the site boundary where there is a further fence on the edge of the rear gardens to the adjacent residential properties. The proposed acoustic fence would assist to reduce noise levels for nearby residents.
37. The proposed layout of the development, with car parking and deliveries restricted to the front of the coffee shop, increases the distance to the residential receptors. The building itself assists to reduce noise levels to the rear of the site. On my site visit I stood in the garden areas to Nos 5 and 7 Coachman's Court and went inside the properties. Whilst the gardens were quiet, traffic noise from Wetherby Road was audible.
38. The Noise Report assesses peak operations and therefore for the much of the time the coffee shop would be open, the noise levels would be less than predicted. Given the context of the site, the proposed hours of operation and that the assessment is based on worst case, I consider that, with the mitigation measures proposed, the development would not have a significant impact on the living conditions of the occupiers of nearby properties.
39. Concern has also been raised by residents about the potential for light pollution from the headlights of vehicles and proposed lighting within the site. I am satisfied that any light pollution would be mitigated by the proposed 2-metre-high acoustic fence bounding the drive thru lane. A suitably worded condition should the appeal be allowed, could require the submission and approval of an acceptable lighting scheme. Illuminated advertisements would be the subject of a separate application to the Council for Advertisement Consent.
40. In summary, I am satisfied that the appeal proposal would not cause harm to the living conditions of the occupiers of nearby residential properties as a result of noise or light pollution. Accordingly, the scheme would comply with the PPG and the Framework which in paragraph 180 requires new development to avoid noise giving rise to significant adverse impacts on health and the quality of life. It would also comply with Policy HP4 of the Harrogate District Local Plan which seeks to ensure that significant adverse impacts do not affect the amenity of neighbours and occupiers.

Other Matters

41. The proposed new access to the appeal site requires the felling of an ash tree the subject of a Tree Preservation Order. It is notable that the tree is assessed

as a category B tree in the Appellant's Arboricultural Statement, of moderate quality. Whilst it has amenity value, its removal is necessary to accommodate an improved access to the site. The proposal includes a landscaping scheme which would provide in excess of 40 new trees. I am satisfied that the removal of the tree is acceptable in this instance.

42. Representations have been made to the effect that the rights of nearby occupiers, under the Human Rights Act 1998, including Article 1 and Article 8 of the First Protocol, would be violated if the appeal were allowed. However, I have found that the proposal would not harm the living conditions of the occupiers of nearby properties and would accord with the relevant planning policy objectives. It would not constitute an excessive or disproportionate effect on the interest of the affected persons. Therefore, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under the First Protocol.

Conditions

43. The Council and the appellant have put forward a list of agreed conditions should the appeal be allowed. I have assessed these in light of the requirements of the PPG and the Framework and have amended the wording where I consider it is necessary. I impose the standard timeframe condition in order to comply with the legislation and a condition referencing the approved plans for the avoidance of doubt.
44. A number of conditions are necessary to safeguard residential amenity. These include conditions requiring the submission of a construction management plan (condition 3), an Operational Management Plan to control litter (condition 4), the erection of the acoustic fence (condition 5), hours of operation of the coffee shop (condition 14), waste storage and collection (conditions 7 and 8), commercial deliveries (condition 9), the restriction of external seating areas (condition 15), obscure glazing and the emergency use only of the door on the western elevation (condition 16 and 17) and the submission of a lighting scheme (condition 19). In order to protect both residential amenity and to control any potential odour nuisance should cooking become an integral activity, condition 6 requires details of air extraction to be submitted for approval.
45. In the interest of highway safety, conditions 10 and 11 are necessary to ensure the implementation of the right turn lane into the site and the pedestrian refuge within Wetherby Road. For the same reason condition 12 is required to ensure the provision of on-site car parking, turning and manoeuvring areas and cycle parking within the site. To ensure that construction vehicles are parked on the site and not on the highway and to ensure adequate on-site storage of materials, condition 13 is necessary.
46. Condition 18 is required to ensure that the proposed landscape scheme is implemented and maintained to protect the character and appearance of the area.

Conclusion

47. I have found that the appeal proposal would not cause harm to highway safety, air quality or the living conditions of the occupiers of nearby residences. It

therefore complies with Policies TI1, TI13 and HP4 of the Harrogate District Local Plan 2014-2035.

48. I recognise that my findings will be disappointing to the local residents and Ward Councillor who gave evidence at the hearing. However, based on the technical evidence before me and all that I have seen and heard, with the proposed mitigation measures secured by planning conditions, I am not persuaded that the development would cause significant harm.
49. For the reasons given above and having had regard to all other matters raised, I allow this appeal.

Helen Hockenhull

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun on or before three years from the date of this permission.
2. The development hereby approved shall be carried out in strict accordance with the following approved plans: Proposed Layout Plan drawing ref: 181298-PLNG12J, Proposed Site Elevations drawing ref 181298-PLNG13F, Revised Landscape Layout Plan drawing ref: 4186 01Rev A, Internal Layout Plan drawing ref 181298-PLNG15.
3. No development shall take place until a method statement for the demolition and construction of the development hereby approved has been submitted to, and approved in writing by, the Local Planning Authority. The demolition and construction works shall be carried out in accordance with the approved method statement. Details submitted in respect of the method statement, incorporated on a plan, shall provide for wheel cleaning facilities during the demolition, excavation, site preparation and construction stages of the development. The method statement shall also include details of the construction operating hours, means of recycling materials, dust management, the provision of parking facilities for contractors during all stages of the development (excavation, site preparation and construction) and the provision of a means of storage and/or delivery for all plant, site huts, site facilities and materials.
4. Prior to the premises coming into use, an Operational Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Operational Management Plan shall contain details of what measures are to be taken to minimise litter generated from the operation of the use hereby permitted. Once the Operational Management Plan is approved in writing by the Local Planning Authority it shall be implemented and maintained for the lifetime of the development.
5. The use hereby permitted shall not commence until the construction of the acoustic barrier as shown on drawing reference: 181298-PLNG12J and specified in Letter from Wardell Armstrong – Noise Comments (dated 2 August 2019) has been completed and those works shall be maintained and retained thereafter for the lifetime of the development.
6. Should cooking of food become an integral business activity, a revised scheme containing full details of arrangements for internal air extraction, odour control, and discharge to atmosphere from cooking operations, including any external ducting and flues, shall be submitted to and approved in writing by the local planning authority. The works detailed in the approved scheme shall be installed in their entirety before the use hereby permitted is commenced. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions and operated at all times when cooking is being carried out.
7. The waste derived from the business shall be stored within the proposed compound as shown on drawing reference: 181298-PLNG12J, to ensure that no detriment to amenity from smell, flies or vermin arises. The waste storage compound shall be maintained for the life of the approved development.

8. No waste collections shall take place on or from the site before the hours of 0800 nor after 1800 Monday to Saturday, or at all on Sundays and Public Holidays.
9. All commercial deliveries to the premises (not specific to waste collections) shall take place at the front of the building between the hours of 07:00-19:00 Monday to Saturday, and 08:30-19:00 Sunday & Public Holidays.
10. There shall be no excavation or other ground works, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or buildings or other works until:
 - i. The details of the required highway improvement works, listed below, have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.
 - ii. An independent Stage 2 Safety Audit has been carried out in accordance with HD19/03 - Road Safety Audit or any superseding regulations.
 - iii. A programme for the completion of the proposed works has been submitted.

The required highway improvements shall include:

- a. Provision of a right-hand turn lane on Wetherby Road, heading south east, to the satisfaction of the Local Planning Authority in consultation with the Highway Authority.
11. The development shall not be brought into use until the provision of a right hand turn lane on Wetherby Road, heading south east, as shown on drawing number 181298-PLNG12J has been constructed and a pedestrian crossing island, outside the Citroen garage, as shown on drawing number 181298-PLNG12J has been provided to the satisfaction of the Local Planning Authority in consultation with the Highway Authority.
 12. Notwithstanding the provision of any Town and Country Planning General Permitted or Special Development Order for the time being in force, the areas shown on the proposed layout plan drawing ref: 181298-PLNG12J for parking spaces, cycle storage areas, turning areas and access shall be kept available for their intended purposes at all times.
 13. There shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction of the site until proposals have been submitted to and approved in writing by the Local Planning Authority for the provision of:
 - i. On-site parking capable of accommodating all staff and sub-contractors' vehicles clear of the public highway
 - ii. On-site materials storage area capable of accommodating all materials required for the operation of the site.

The approved areas shall be kept available for their intended use at all times that construction works are in operation. No vehicles associated with on-site construction works shall be parked on public highway outside the front of the application site.

14. The use of this site hereby permitted as a coffee shop drive-thru shall not be carried out other than between the hours of 0700-2200 Monday to Saturdays and 0700 -2000 on Sundays and Public Bank Holidays.
15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no outside seating areas for staff or customers shall be provided within the site boundaries.
16. The glazing in the western elevation of the building hereby approved, as shown on drawing reference: Proposed Elevation - 181298-PLNG13F shall be obscure glazed to level 3 or higher of the Pilkington scale of privacy or equivalent and that level of obscure glazing shall be retained throughout the life of the development.
17. The door in the western elevation of the building hereby approved, as shown on drawing reference: Proposed Elevation - 181298-PLNG13F shall be used for emergency exit of the building only and shall be retained as such throughout the life of the development.
18. The landscape scheme as shown in landscape layout plan 4185 01 Rev a, shall be implemented within the first planting season (October to March) after completion of the permitted development. If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
19. Notwithstanding the flood lights shown on the layout plan (drawing reference: 181298-PLNG12J), the development shall not be brought into use until a scheme detailing all artificial lighting for external areas has been submitted to and approved in writing by the Local Planning Authority. The approved scheme of external lighting shall thereafter be implemented for the lifetime of the development.

APPEARANCES

FOR THE APPELLANT:

Mike Hopkins	Director, JLL
Rob Buffham	Planning Manager, Euro Garages Group
Alan Evans	Barrister, Kings Chambers
Gavin Snowball	Dynamic Transport Planning
Malcolm Walton	Wardell Armstrong
Simon Urquhart	Wardell Armstrong

FOR THE LOCAL PLANNING AUTHORITY:

Mark Williams	Senior Development Management Officer, Harrogate Borough Council (Discussion on conditions only)
---------------	--

INTERESTED PARTIES:

Pat Marsh	Ward Councillor
Paul Bell	Resident
David Stephenson	Resident
Joe Shields	Resident
Joanne Richardson	Resident
Mark Hinchcliffe	Resident
Ian Brocket	Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Plan Ref 181298-PLNG15 Proposed Internal Layout and Roof Plan
2. Copy Cllr Marsh statement

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Copy of Mr Bell's statement

2. Copy of Ms Richardson's statement
3. Plan from Mr Shields showing position of his drive, 141 Wetherby Road
4. Email from the Council copying correspondence with the Highway Authority regarding a fatal accident at the Woodlands junction.
5. Revised list of conditions