

Application Number

P/2016/0371

Site Address76 Warbro Road
St Marychurch
Torquay
TQ1 3PS**Case Officer**

Mrs Saffron Loasby

Ward

St Marychurch

Description

Change of use from printers workshop to MOT testing station, including installation of an MOT lift (additional information received 20 July 2016)

Executive Summary/Key Outcomes

The scheme proposes a change of use within a B2 use class. Conditions attached to a previous consent, for a 'printers workshop', restricted permissible changes of use within the Use Class Order to allow for specific assessment of surrounding residential amenity and environmental disturbance that may arise from any change of use.

This application proposes a change of use to an MOT testing centre (B2). It is submitted with a Noise Assessment and Planning Statement.

The proposed MOT testing station would be provided within an existing building that has consent for commercial use. It would result in provision of four jobs. A number of representations both in support and against the proposal have been received. The principle of regeneration and economic investment is supported by Policy SS4 of the Torbay Local Plan.

The principle concerns in respect of this development are the impact of the proposal in relation to noise nuisance and highway safety. The applicant has submitted a noise assessment that concludes that the level of noise that would be generated at the nearest noise sensitive residence would be below the permissible noise level target. However this is on the basis that the building would be fully sealed with windows and doors closed and existing air gaps between roofing sheets and the supporting wall fully sealed. Advice from the Environmental Health Officer is that these conditions would be difficult to achieve at all times when machinery is in operation. Consequently it is concluded that there would be a reasonable likelihood that the proposal would result in noise nuisance to nearby properties, contrary to Policy DE3 of the Torbay Local Plan.

In addition the proposal would require vehicles to reverse onto Warbro Road in a location close to Spires College and opposite school coach drop off points. There is a strong possibility that the proposal would create a hazard very close to a

school and therefore would result in a severe impact on a highway, contrary to Policy TA2 of the Torbay Local Plan.

A balance has to be reached between the positive and negative attributes arising from the proposed development of an existing commercial building in a sustainable location. In this case the detrimental effects on residential amenity and highway safety would not be outweighed by the proposed development and therefore the proposal is not supported.

Recommendation

Refusal. (reasons at end of report).

Statutory Determination Period

8 weeks/Extension of time agreed until 08.08.2016 to allow the application to be considered by the Development Management Committee.

Site Details

The site contains a commercial premises located on Warbro Road, opposite Spires College site and surrounded by residential and holiday accommodation. The most recent lawful use of the building was a printers workshop but it is currently being used by the applicant for storage. There is a small forecourt in front of the building. The front wall has been partly removed to allow for off road parking provision with dimensions for three cars, although two cars parked allow for significantly improved pedestrian access. The vehicular access into the property is via a roller shutter door; accessible when there is no parked vehicle in front of it (hence parking provision for two vehicles is considered to be a maximum). There is also pedestrian access to the front of the building via a Upvc door, both of which front onto Warbro Road.

The building runs the full length of the plot and abuts residential land to the north, east and west, with Warbro Road to the south. The surrounding properties comprise houses, flats and overnight holiday accommodation. There are on road parking restrictions in the immediate vicinity, including double yellow lines, match day parking (given the proximity of the football ground and Spires College) and bus/coach parking only opposite the application site.

Detailed Proposals

The planning proposal is for a change of use of an existing commercial building of approximately 142m.sq. of existing B2 space, specifically a Printers workshop due to a restrictive condition, to an alternative B2 use. The proposed B2 use comprises an MOT testing station, including the installation of a MOT lift. The hours of operation are proposed to be 8am-5:30pm Monday to Friday and 9am-1:30pm on Saturdays. All MOT's will be pre-booked appointments only. No external alterations are proposed to the building. An internal MOT lift would be provided as part of the proposal.

The application proposes to create 4 new jobs.

The application was submitted with a Flood Risk Assessment. Later submissions include a Planning Statement briefly covers the operation management of the proposed business and a Noise Assessment report.

Summary of Consultation Responses

Senior Environmental Health Officer - I have reviewed both the Planning Statement and the Acoustic Consultants report and have a few concerns.

The proposed development is situated between residential properties and overnight holiday accommodation.

Whilst Warboro Road is not the quietest area in Torbay, it is predominately residential in nature and to introduce a general industrial use to such a location, particularly where residential accommodation is in such close proximity does give me cause for concern.

The applicant has submitted an acoustic consultants report in connection with the proposal which argues that there will be little or no impact on the noise environment created by the MOT test facility with the doors etc shut. The report then goes on to propose a number of mitigation measures to ensure there is no cause for concern, such as only sounding the horn of vehicles in an emergency, and keeping doors shut during testing.

Whilst this is good advice, the MOT test includes sounding the horn of the vehicle to ensure it works, I also imagine difficulties with not having doors open during testing, both from a Health and Safety perspective and simple practicality of operating the business when the doors are being continually opened and closed. Roller shutter doors can also be notoriously loud also unless properly maintained.

I am therefore concerned that whilst the operation of this site as a MOT station may be technically feasible without causing detriment to local residential accommodation, I do not feel it would be simple matter for the business to operate in this way and may well impede the operation of the site.

Senior Strategy and Project Officer - I refer to the above application and to the Planning Statement MGR/16/0198A and site layout plan. I also refer to my initial comments dated 22 April 2016, which requested a transport statement dealing with net additional movements, staff travel and parking, road speeds on Warbro Road etc. Paragraph 32 of the NPPF requires assessments to show that safe and suitable access can be provided.

The Planning Statement does not address the issue of traffic speeds or impact on school traffic, including relationship with the coach bays directly outside the site. The Planning Statement suggests 1-2 appointments per hour but does not

consider deliveries and collections, disposal or staff movements.

It does not deal with the existing level of traffic generation. However on the face of it, the traffic generated by an MOT use is likely to be greater than traffic use generated by the existing use as a store, or approved printer's workshop.

It is clear that vehicle turning cannot be provided on site, so that vehicles would need to reverse onto Warbro Road. This is a particular concern given the proximity of Spires College and the school coach drop off points directly opposite the site.

The site layout shows four parking spaces. Local Plan Policy TO3 and Appendix F require 3 car spaces per 3 bays plus visitors' parking. Whilst the numbers shown comply with the requirement in Appendix F, I am concerned that it will be difficult to manoeuvre into these spaces particularly if some are occupied for example by MOT failures. In practice there will need to be some reverse-shunting onto Warbro Road in order to use the spaces. I suspect that it will be simpler for cars to be left on Warbro Road, which could cause hazard in peak periods.

I am aware of the need to support employment in Torbay in the interest of sustainable communities, and that the building has an existing use. However, on the basis of the evidence provided there would be a strong possibility that the proposed MOT Testing station would create a hazard very close to a school. On this basis the Highway Authority is unable to support the application.

If Members were minded to approve it, a s278 Agreement should be required to establish no loading in the vicinity of the coach parking during peak hours. However this would only partly alleviate concerns about highway safety because it would not overcome the need for vehicles to reverse onto the road.

Summary of Representations

There have been over 60 representations in total. Some of which were duplications.

At the time of writing 42 letters of objection and 17 letters of support had been received.

The issues raised in the objections letters are bullet pointed below:

- o Parking problems
- o Out of character
- o Previous planning history is negative
- o Noise pollution (especially through the roof)
- o Traffic congestion
- o Impact on wildlife and trees where the site abuts the Conservation Area

- o Degrade a residential and tourist area
- o Set a bad precedent over development
- o Impact on great crested newts in neighbouring garden
- o Negative impact on pedestrian safety
- o Applicant suggesting additional tyre bay and repair centre (not just MOT)
- o Letters of support are not from residents in the vicinity of the application site
- o Already plenty of MOT centres in the area

The issues raised in letters of support are bullet pointed below:

- o Application to support local businesses
- o Application proposes much needed facilities and contributing to the community
- o Will supply local jobs
- o Noise impact would be minimal when compared to the level of activity in this area by other sources
- o Operations can be restricted and controlled to specific hours to avoid conflict with neighbours
- o All MOT's will be pre-booked so parking will not be an issue
- o Sufficient space on forecourt and in the building for parking
- o Removes an existing eyesore

Relevant Planning History

P/2011/1332 - Change of use from printers workshop to class B1, use of premises for the repair, servicing and sale of gardening equipment and domestic machinery - REFUSED 09.02.2012

P/2006/0566 - Removal of Condition (1) (Ref App P/2004/0741/PA) Continued Use as Printers Workshop - PERMITTED 19.05.2006

P/2004/0741 - Change of Use to Printers Workshop with Office - PERMITTED 02.09.2004

Key Issues/Material Considerations

The material considerations of this application are with regard to the suitability of the use in the area and the impact it would have on the amenity of the neighbouring occupiers and wider surroundings. There is further consideration given to additional implications of the use, such as parking and highway access and safety.

The key issues in assessing this application are:

1. The principle of the proposed use
2. Character and appearance of the area
3. Neighbour amenity

4. Highway Safety/traffic issues related to vehicular movements generated from the use

1 - The principle of the proposed use

The previous lawful use on the site was a printer's workshop. Measures were included in the decision and application itself to reduce the impact of noise through the inclusion of a soundproof room. There was also a restriction imposed on the operating hours as well as a restriction on any other B2 or B1 use class operating from the site without specific planning consent. This was put in place to ensure that any future application was considered on its merits and specifically meet the criteria of the then relevant Policy E5 of the Torbay Local Plan 1995-2011.

The building is considered to be suitable for an industrial use in terms of space and internal layout. However it is the location and the specific use of the building that causes the most concern.

In this case the existing use comprises a B2 use, the proposed MOT testing station is also a B2 use and listed as a 'General Industry' use in the Town and Country Planning (Use Classes) Order 1987 (as amended), the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016.

The principle of using the building for a business use is already established and therefore there is material weight in retaining a local business use that is reflective of the size and location of the existing building. The increase in jobs proposed is a positive factor and given the lack of off road parking for a building of this size, employees would have to use public transport, walk or cycle. On road parking in the local vicinity is possible but limited in places by parking restrictions. The promotion of sustainable transport is wholly supported.

It is important to reuse buildings within the urban environment where possible; however the uses must be compatible with the surroundings. It is evident from the conditions that were considered necessary on the previous decision that the site is sensitive and as such an increase in use or industrial style activity could potentially impact the area. An application for a change of use from printers workshop to Class B1, using the premises for the repair, servicing and sale of gardening equipment and domestic machinery was refused in 2012 because the proposed development would have an adverse impact on the surrounding residential amenities and cause environmental disturbance, especially resulting from noise, thus affecting the built environment in that location. The planning history suggests that an industrial use, be it B1(C) or B2, of this building is unacceptable due to its surroundings uses.

During processing this application it was agreed that time for consideration of the

application be extended for determination to allow additional information regarding noise and traffic be submitted for further assessment. The principle of a business use is accepted although what type is largely dependant on the outcome of the required accompanying assessments.

Policy SS4 (The economy and employment) in the Torbay Local Plan encourages new businesses and investment in order to create new jobs. This proposal would result in the creation of four new jobs in a sustainable location. The economic benefit of the proposal has to be weighed against impact of the development on amenity and highway safety. Due to the proximity of residential properties this is a sensitive site that requires a comprehensive assessment of the proposed use in order to determine whether it would be acceptable in this location.

2 - Character and appearance of the area

The character of the area is predominately residential. There are residential properties to the north, east and west of the application site with hotel/tourist accommodation also located to the east of the building. Opposite the site, across Warbro Road is Spires College, bound by a high stone wall and metal fencing; on the other side of this boundary are outdoor sport courts. The area of road that runs parallel with the courts is marked out for buses only. The wider character is also primarily residential.

The existing building is a non-descript single storey building with a low pitched roof behind a parapet wall and set back slightly from the road allowing some off road parking provision. The current visual impact of the building in the street scene is minimal and this would not change as a result of the proposed application. However, the use of the building will involve the coming and going of visitors, employers, deliveries and customers, thus materially changing the level of use of the building that was previously permitted. Whilst it is unknown what level of use the printers workshop generated by way of traffic, an MOT testing centre suggests the continuous movement of vehicles, as well as deliveries, visitors and employees. This in turn will have an impact on the existing residential character of this part of Warbro Road. Whilst parking on the road is not entirely restricted along Warbro Road the increased traffic and associated noise and disturbance will also have an impact on the character and appearance of the site and surrounding area.

By its very nature this particular industrial use attracts vehicles. Conditions have been considered in order to help overcome the impact this use may have. However, the Council cannot control on street parking as part of this planning application. In a busy, but primarily residential area the impact the proposed B2 use will have on the character and of the area is considered to be unacceptable.

3 - Neighbour Amenity

Noise can have a significant effect on the environment and on the quality of life

enjoyed by individuals and communities. The Planning system should ensure that wherever practicable, noise sensitive developments are separated from major sources of noise, and that new development involving noisy activities should, if possible be sited away from noise sensitive land uses. Where it is not possible to achieve such separation of land uses, officers need to consider whether it is practicable to control or reduce noise levels, or to mitigate the impact of noise through the use of conditions.

The impact of the use of this building has previously been a sensitive matter. Due to the proximity of neighbouring residential occupiers to the application site specific environmental matters should be fully addressed. These would cover noise and odour pollution from the new use of the building (as well as highway safety which is discussed separately in more detail below). Whilst the applicant explains that there would be only several minutes of engines running per vehicle MOT test, as a business this would happen regularly throughout the day. It is highly unlikely that the openings in the building will be permanently shut throughout testing and therefore consideration must be given to the noise and odour pollution that will be emitted from the building that does not, as far as we are aware, have any air filtering system or noise mitigation in place. The previous use as a printers had to provide a sound proof room for its' noisiest equipment, details of which were submitted as part of the application.

The noise assessment submitted by Arun Acoustics in support of the application specifically assessed plant and equipment associated with an MOT testing centre. It considers maximum permissible noise levels for plant and equipment, operational noise levels and calculated attenuation losses and predicted noise levels at nearby residential dwellings from daily operations.

The conclusion of the assessment under section 8.0 of the report advises that based on measured noise levels for typical plant and machinery associated with an MOT test centre, noise breakout calculations show that noise levels at the nearest noise sensitive facade would be at worst 32dBA. As this does not exceed the maximum permissible noise level target it is considered unlikely that noise levels would cause complaints. It is also noted under part 7.3 of the same report that the calculations are based on the building being fully sealed. Reference is made noting that the existing building is not fully sealed and that all air gaps between the roof and supporting walls should be fully sealed with expanding foam, or mineral wool insulation to prevent noise breakout. It also refers to a noise management plan, detailing various mitigation efforts (although not an exhaustive list) that should be considered to reduce the likelihood of disturbance. These include the following:

- o Slamming of car doors/bonnets should be avoided
- o Avoid the use of car horns
- o Roller shutter doors should be closed when high level machinery or tools are used

- o Slow release of air from tyres under pressure and covering the valve with a cloth
- o Cars fitted with retro exhaust systems should be reversed into the garage with the exhaust system facing away from door openings
- o Carry out high impact activities on rubber matting over a solid surface
- o When purchasing new equipment select new equipment that has reduced sound powers levels through innovative or technical means. As general guidance select equipment with a sound power level of less than 65dB Lw.

Noise pollution is not only caused by running engines. The noise associated with a B2 use and more specifically an MOT test centre (with associated vehicle repairs) also comes from general coming and going, car doors opening and shutting, power operated machinery, horns, reversing beepers, metal on metal work and other associated mechanical related noises. All of which will have an impact on neighbour amenity. Whilst noise mitigation measures have been suggested as part of the report, conditions would have to be put in place to ensure the new use could operate fully without adverse noise impact on neighbour amenity.

Paragraph 206 of the National Planning Policy Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable.

It is questioned that if conditions were put in place would they meet these tests and whether the restrictions in place would limit the functionality of the proposal to such an extent that the scheme would not be workable as an MOT test centre. For example a condition requiring all doors and windows to be shut when high level machinery or tools are used. This would include the closure of the roller shutter door, the pedestrian door and would not allow for ventilation or access/egress whilst work was being carried out. This would not be reasonable. The use of 'high level machinery or tools' is not precise and enforcing this would be difficult. Additionally, requesting the applicant to purchase select noise sensitive equipment is not considered to be relevant to planning and to the development being permitted, nor would it be enforceable.

In conclusion, the submitted noise report states that noise levels generated by the proposed development would be acceptable only if the building is acoustically sealed and recommends a number of measures to be carried out during operation to ensure that there is no noise nuisance. Advice from the Senior Environmental Health Officer is that it would be unlikely that the business could operate with the doors shut during testing for practical reasons. Therefore there is concern about whether the proposed use could be carried out without causing a noise nuisance. Consequently it is considered that the proposal would fail to meet the requirement in Policy DE3 for new development to provide a good level of amenity for residents and occupiers.

4 - Highway Safety

As per the comments from the Senior Strategy and Project Officer there are concerns about highway safety in this location. The application is not supported by a Transport Statement and there are concerns that traffic problems may not be capable of resolution. There is no existing off road manoeuvrability on site nor is there capacity for it. There is little, if any, control as part of this application over the way in which on road parking is carried out. Customers and those associated with visiting the site would have to ensure they complied with the local parking restrictions or face parking fines.

Whilst there is some merit in visitors having specific appointment times to assist in reducing visitor and car numbers, the reality is that most people have their cars MOT'd around a time and date in the week that is suitable to them, fixing it around work, childcare, shopping, weekends etc. Not many have time to sit and wait for their cars to be MOT'd and to drive them away straight after. Failed MOT's can result in a number of cars not being driven away at all and technically not permitted to be on public roads.

Whilst the planning statement and drawing no. MGR/16/0198A/01 show how parking provision can meet the Council standards the loss of on street parking or public parking provision is a material consideration in planning applications, with additional weight being given to loss of provision in those areas where there is congestion and/or heavy use of public or on street spaces. Additionally there is no reference or assessment of the existing or proposed traffic levels, staff travel/parking and the impact this will have on highway safety. testing station would create a hazard very close to a school and therefore the Highway Authority does not support the application. Consequently the proposal would be contrary to Policy TA2 which seeks to ensure adequate new development proposals do not impact on the wider network by causing/adding to congestion and provide for safe turning/manoeuvring of vehicles within the site.

S106/CIL - No S106 contribution would be applicable in this case.

Conclusions

The determination of the application has been delayed so that the applicant can present the proposed scheme with the assistance of the relevant reports regarding noise and traffic generation.

The noise assessment claims that the proposed use will not have an adverse impact on the amenity of neighbouring occupiers subject to the provision of proper noise insulation and a noise control management plan. The noise assessment is considered by the EHO to be acceptable, however the strict conditions that would be necessary to enable the scheme to go ahead are considered to be unreasonable and mostly unenforceable. It is considered that the business would be unlikely to reasonably function as proposed and thus the control of noise from the site is still a problem. The proposal would therefore be

contrary to Policy DE3 of the Torbay Local Plan.

The planning statement fails to fully address the impact the proposed development will have on the users of Warbro Road by way of traffic movement and therefore there is still considerable concern about highway safety, parking provision and manoeuvrability for this specific B2 use. Consequently the proposal would be contrary to Policy TA2 of the Torbay Local Plan.

Officers consider a change of use to be a positive proposal in light of the benefits it could bring to supporting local business and the generation of employment; however it has not been proven that the promotion of this business use in this location outweighs the identified harm that has been identified during this application process. No evidence has been presented to indicate that the proposed use is the only viable use for the site and officers recommend that this scheme is refused for the following reasons:

Condition(s)/Reason(s)

1. The proposed use would have an adverse impact on the surrounding residential amenities and cause environmental disturbance, especially resulting from noise, contrary to policy DE3 Torbay Local Plan adopted December 2015. Notwithstanding the submitted Noise assessment and subsequent comments received from the Council's Environmental Health Manager, conditions which would seek to control the impact of noise and disturbance to local residents are considered to be too restrictive to enable the proposed change of use to function properly and fully, and are impracticable. It is also considered that they would not meet the relevant tests of paragraph 206 of the National Planning Policy Framework as they would be difficult to enforce and unreasonable in all other respects.
2. The proposed change of use would create a traffic hazard by reason of an increased number of vehicles reversing onto Warbro Road in proximity to Spires College, opposite school coach drop off points, and an increased demand for on street parking in the vicinity of the site. As such the proposed development would be contrary to Policy TA2 of the Torbay Local Plan adopted December 2015 which supports development that does not impact on the wider network, by causing/adding congestion and provide safe turning/manoeuvring within the site, particularly for commercial development, and para. 32 of the NPPF.

Relevant Policies

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