

Case Number	22/01397/FUL (Formerly PP-11171181)
Application Type	Full Planning Application
Proposal	Continuation of use of land as car sales forecourt and vehicle storage area (sui generis), including retention of portable building and container (retrospective application), resurfacing works, and erection of a 2.1 metres high acoustic fence along the south-west edge of the designated storage area and car sales forecourt (Amended description)
Location	268 Handsworth Road and land to the rear of 270 Sheffield S13 9BX
Date Received	07/04/2022
Team	City Centre and Major Projects
Applicant/Agent	Crowley Associates Ltd
Recommendation	Grant Conditionally

Time limit for Commencement of Development

Approved/Refused Plan(s)

1. The development must be carried out in complete accordance with the following approved documents:

Drawing no. 001 Rev B (Site Location Plan) published 07.04.2022
Drawing no. 003 Rev E (Proposed Site Layout Plan) published 31.05.2022
Details of 12K Envirofence (with images) published 04.05.2022

Reason: In order to define the permission.

Pre Commencement Condition(s) – ('true conditions precedent' – see notes for definition)

Other Pre-Commencement, Pre-Occupancy and other Stage of Development Condition(s)

2. Within one month of the date of this decision a 2.1 metres high acoustic fence shall have been erected in the location as shown on the approved drawing no. 03

Rev E (published 31.05.2022) in accordance with the approved details; 12K Environfence, ref: JSW 01 Issue 02, prepared by Jacksons Fencing; How to Install Jakoustic Reflective Fencing Using Tuning Fork Posts, ref: JFW 35 Issue 6, dated 17.02.2022, prepared by Jacksons Fencing; and in line with recommendations of the Noise Assessment report, ref: 13438.01 v5, dated 03/2022, prepared by NoiseAssess. Thereafter the approved acoustic fence shall be retained and maintained in good order.

Reason: In the interests of residential amenity.

3. The development shall not be used unless the running lane and turning head is retained as marked out, as shown on drawing no. 003 Rev E 'Proposed Site Layout Plan' (published 31.05.2022), to allow free movement of vehicles within the site and thereafter such running lane and turning head shall be retained free of all obstructions, including the storage, display and depositing of materials, cars and other objects so that the running lane and turning head is fully available for the turning and manoeuvring of visitor, delivery or stock vehicles.

Reason: In order to ensure that there is adequate manoeuvring and customer parking space on site, in the interests of highway safety.

4. Within three months of the date of this decision or an alternative timeframe to be agreed with the Local Planning Authority, the proposed drainage and hard landscaping shall have been implemented in accordance with the details approved under 19/00674/COND3 and thereafter retained.

Reason: To ensure the proposed development is appropriately drained, in the interests of the amenities of the locality.

5. No externally mounted plant or equipment for heating, cooling or ventilation purposes, nor grilles, ducts, vents for similar internal equipment, shall be fitted to the building unless full details thereof, including acoustic emissions data, have first been submitted to and approved in writing by the Local Planning Authority. Once installed such plant or equipment shall not be altered.

Reason: In the interests of the amenities of the locality and occupiers of adjoining property.

6. Prior to the installation of any external lighting, full details shall have been submitted to and approved in writing by the Local Planning Authority and such approved external lighting shall only be installed in accordance with the approved details.

Reason: In the interests of residential amenity.

Other Compliance Conditions

7. Deliveries and collection of vehicles shall only take place between 1000 hours and 1800 hours, Mondays to Saturdays and shall not take place on Sundays or Public Holidays.

Reason: In the interests of residential amenity.

8. The premises shall only be used during the following times:

0800 hours to 1800 hours, Mondays to Saturdays; and
1000 hours to 1600 hours, Sundays and Public Holidays

Reason: In the interests of the amenities of the locality and occupiers of adjoining property.

9. No music shall be played on the site or a tannoy system be installed and used on the site at any time.

Reason: In the interests of residential amenity.

10. The existing customer car parking accommodation within the site, as indicated on drawing no. 003 Rev E 'Proposed Site Layout Plan' (published 31.05.2022), shall be retained for the sole use of visitors of the use hereby approved, and no stock vehicles shall be parked or stored in the parking bays. Thereafter, such customer car parking accommodation shall be retained.

Reason: To ensure satisfactory parking provision in the interests of traffic safety and the amenities of the locality.

11. No valeting of vehicles or use of powered equipment shall be carried out on the site at any time.

Reason: In the interests of residential amenity.

12. There shall be no vehicle engines left running other than for moving a vehicle within the site.

Reason: In the interests of the amenities of the locality.

13. There shall be no commercial vehicles stored or displayed for sale on the site.

Reason: In the interests of amenities of adjoining residential properties.

Attention is Drawn to the Following Directives:

1. The Local Planning Authority has dealt with the planning application in a positive and proactive manner and sought solutions to problems where necessary in accordance with the requirements of the National Planning Policy Framework.
2. The applicant should install any external lighting to the site to meet the guidance provided by the Institution of Lighting Professionals in their document GN01: 2011 "Guidance Notes for the Reduction of Obtrusive Light". This is to prevent lighting causing disamenity to neighbours. The Guidance Notes are available for free download from the 'resource' pages of the Institute of Lighting Professionals' website.
3. As the proposed development abuts the public highway you are advised to

contact the Highways Co-ordination Group prior to commencing works:

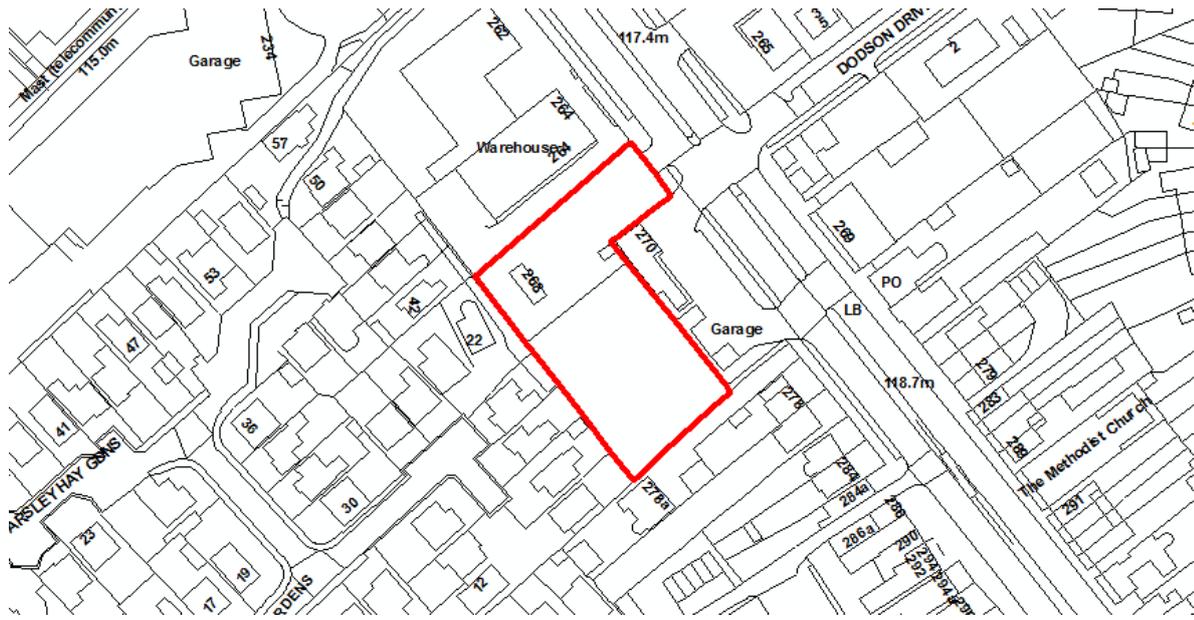
Telephone: 0114 273 6677

Email: highways@sheffield.gov.uk

They will be able to advise you of any pre-commencement condition surveys, permits, permissions or licences you may require in order to carry out your works.

4. Plant and equipment shall be designed to ensure that the total LAr plant noise rating level (i.e. total plant noise LAeq plus any character correction for tonality, impulsive noise, etc.) does not exceed the LA90 background sound level at any time when measured at positions on the site boundary adjacent to any noise sensitive use.

Site Location



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LOCATION AND PROPOSAL

This report relates to an existing car sales business, 'Motor Gurus', which is positioned on the west side of Handsworth Road, opposite the junction with Dodson Drive.

The application site lies within a Business Area, as defined in the Unitary Development Plan. The business has been operating for a number of years and planning permission was granted in February 2020 (ref: 19/00674/FUL) for an expansion of the business premises onto adjacent land to the south-east; a permission which has been implemented. Planning permission was granted on a temporary 2 year basis, which expired on 18 February 2022. Two planning applications (refs: 21/02655/FUL and 21/04597/FUL) were submitted which sought to continue using the site but on a permanent basis and to open on Sundays and Public Holidays but were later withdrawn prior to being presented to the Planning & Highways Committee in February 2022.

The car lot premises utilises most of the site for the display of motor vehicles, but also includes a portable sales building positioned towards the rear section of the site and a storage building to the east set behind an existing structure. A running lane extends through the site leading to 3 designated customer parking spaces. The site is served by an existing means of vehicular access from Handsworth Road, which is flanked by a low brick wall.

The site is enclosed by a variety of boundary treatments, including a metal mesh fence along the northern and eastern boundaries; a solid metal fence and existing trees/shrubs along the south-east boundary; and a mix of timber fencing along the rear, south-west boundary. There are self-set trees and newly planted shrubs near the rear boundary.

The site is bounded by Wilson's carpet warehouse to the north and a hand car wash business (no. 270) to the east, fronting immediately onto Handsworth Road, which is within the same ownership as the application site. On the opposite side of Handsworth Road are local businesses and residential properties and to the south-east and west (at the rear of the site) are residential properties sited at a lower level than the site.

This application seeking to permanently use the land as a car sales forecourt and vehicle storage area (sui generis), including the retention of a portable building and container and to carry out resurfacing works. It is also proposed to erect a 2.1 metres high acoustic timber fence along the south-west edge of the designated storage area and car sales forecourt, between the site and the rear gardens of properties on Parsley Hay Gardens.

RELEVANT PLANNING HISTORY

11/01300/CHU – Continuation of use of existing car park as a car sales forecourt – Granted Conditionally for a period of 2 years - 16.06.2011. (This relates to the smaller site between 264 and 270 and not the larger area of land behind 270 and was a 2 year temporary consent)

16/04353/FUL – Continuation of use of land as a car sales forecourt, use of part of the site for open storage and relocation of cabin – Withdrawn – 18.01.2017.

18/00266/FUL – Continuation of use of the site as a car sales forecourt, retention of

portable sales building and siting of 4 floodlights – Granted Conditionally for a period of 12 months – 16.10.2018. (This relates to the smaller site between 264 and 270 and not the larger area of land behind 270)

Appeal ref: APP/J4423/W/18/3216340 – An Appeal was lodged by the applicant (landowner), disputing the imposition of 3 conditions relating to planning permission 18/0026/FUL which was granted for the continued use of the car sales forecourt for a temporary period of 12 months. The Inspector allowed the Appeal on the basis that 3 customer parking bays be provided and a running lane together with all other conditions originally imposed.

19/00674/FUL – Use of land as car sales forecourt and vehicle storage area (sui generis), including provision of portable building and container – GC 19.02.2020 (This was for the entire site between 264 and 270 and also the larger area of land behind 270)

19/00674/COND1 – Application to approve details in relation to condition nos. 3 (surface water drainage design) and no. 6 (hard and soft landscaping) – The details were not sufficient to be approved.

19/00674/COND2 – Application to approve details in relation to condition no. 6 (hard and soft landscaping) – The soft landscaping details are approved.

19/00674/COND3 – Application to approve details in relation to condition nos. 3 (surface water drainage design) and no. 7 (surfacing of vehicle storage area) – The details are approved.

21/02655/FUL – Application to operate on Sundays and Public Holidays for a further 12 months (Application under Section 73 to vary condition 14 of planning permission no. 19/00674/FUL (Use of land as car sales forecourt and vehicle storage area including provision of portable building and container) – Application was withdrawn.

21/04597/FUL – Application under Section 73 to remove condition no. 1 (temporary use) as imposed by planning permission 19/00674/FUL – Application was withdrawn.

ENFORCEMENT

Since the granting of planning permission 19/00674/FUL there have been complaints about the planning conditions not being complied with. A Temporary Stop Notice was served on 11 August 2020 in relation to the use of the adjacent land for the storage of vehicles. The vehicles were then removed from this parcel of land whilst the conditions were being discharged.

On 14th April 2022, an enforcement notice was served, to cease the use and to remove all the motor vehicles and associated buildings and materials. An appeal has since been lodged against this notice such that it is essentially on hold until the outcome of the appeal.

A number of conditions were imposed on planning permission 19/00674/FUL, which required details to be submitted and approved for landscaping and drainage. These details have been approved under application nos. 19/00674/COND1 to COND3 inclusive. The soft landscaping has been implemented whilst the hard landscaping and

drainage have only been partially completed, with the drainage installed but the Certified type 3 (hard limestone) permeable surface with a plastic paving grid system is still to be provided; and a tarmac surface to be laid where indicated on the site layout plan. In light of the above, a time restricted condition to ensure the implementation of the approved hard landscaping/drainage scheme is recommended should planning permission be granted for the current application.

SUMMARY OF REPRESENTATIONS

Neighbours have been notified with further notification following an amendment to the description (relating to the height of an acoustic fence). Representations from 7 affected households have been received (which includes an anonymous one) objecting to the proposals. Councillor Rooney, Councillor Hurst and Clive Betts MP have also objected to the proposals. The issues are summarised below:

Amenity

- Very noisy; noise from vehicles constantly moving; revving of engines; car doors slamming; shouting.
- Whilst in the garden constant noise, conversations, bad language, shouting and banging can be heard all the time.
- Affects time spent relaxing at home.
- Feel overlooked and sometimes uncomfortable.
- Planning permission granted on a temporary basis; numerous problems occurred, such as floodlights shining in bedrooms, tannoy system installed playing loud music, shouting, abusive language, urination and waving
- Bearing in mind previous complaints re noise and objections why was sales cabin, including alarms allowed to be sited further back into site near to residential boundaries, unlike other businesses on Handsworth Road, which are also constructed of brick and not a portable cabin.
- Have reported to planning and councillors on the conduct of tenants along with photographic evidence; police came only to be told to contact highways, DVLA, EPS etc.
- Tenants open and close to suit themselves with unsociable hours late into the evenings; including May Day Bank Holiday.
- Impact on outlook from and overlooking to residential properties on Parsley Hay Gardens.
- Direct views into bedroom windows at a distance of 9 metres and views into rear gardens at a distance of 1 metre and below the recommended minimum of 18 metres.
- Privacy still an issue and adding an acoustic fence will not solve this, aspect from the rear and upper rooms of properties is unacceptable.
- This proposed acoustic fence still exposing the relocated cabin and the rest of the boundary will serve no use to deter the noise from the cabin where most of the disturbance comes from.
- Enjoyment of property and garden is severely compromised.
- Site sits 3 metres above Parsley Hay Gardens with little consideration given to change in levels; ground floor at site is closer to the first floor level of houses, therefore a 1.8m high acoustic fence, when viewed from Parsley Hay Gardens will feel like c.5 metres high; oppressively high, blocking light, harming outlook and creating a claustrophobic effect.
- Development has cause unnecessary and unimaginable stress to residents of

Parsley Hay Gardens.

- An acoustic report has been submitted but nothing is mentioned about persistent alarms being triggered at all times, interrupting sleep and enjoyment of residences.
- Background noise study covers a two hour period on a Friday, this is completely insufficient and fails to consider the times of day which residents would normally enjoy the quietest moments; the study should cover a full day both on a weekday and a weekend.
- Justification for position of receptors 1.5m above ground level in properties at Parsley Hay Gardens is completely flawed with justification given that business operates during the day only so only the first floors would not be affected. This does not take account for residents who may do shift work, need sleep upstairs during the day, work from home, or want to enjoy peace and quiet upstairs during the day; not up to business to dictate how residents should use their homes.
- Customers can be clearly seen viewing all cars along with commercial vehicles.
- Conduct of staff and alarms: shouting and foul language by staff reported in the past; what recourse for residents if the application is successful?
- Residents of Parsley Hay Gardens are not care-takers/security for site and should not be burdened by the sound of untimely alarms. Residents should be able to enjoy amenity of own homes without hinderance.
- Previous planting reduced noise levels from jet wash but now a mesh screen which doesn't reduce noise levels; the uses should be considered as a whole.
- The application seeks to extend operation of business into Sundays/Bank Holidays which we object to owing to undue noise and disturbance.
- Customers are free to walk around the site and have visual access to gardens and rear of homes.
- Like living in a car park.
- Staff on the site often cause noise and disturbance when at the back of the cabin which has no acoustic attenuation; fencing should extend behind it.

Highways

- Car sales business has affected parking on Handsworth Road, with cars lined on both sides of the road, which affects access to using local amenities.

Landscaping

- Storage area land was full of mature trees and shrubs, which in October 2016 were removed without any consultation or planning permission, and then left piled up with other debris, causing an eyesore (NB, this in itself did not require planning permission).
- Tree planting to safeguard privacy has not been carried out.
- Landscaping details including maintenance plan has not been submitted; completely inadequate; neighbours should have ability to comment on it; on a significant slope; not clear what landscaping could provide adequate screening/outlook whilst not be at risk of falling in high winds and heavy rain; should be reviewed by an arboriculturist.
- Original proposal was flawed; not a visual improvement; greenery was lost and the Council did not secure its retention. Planting provided is inadequate and removed trees/shrubs should have been replaced by ones of equal height and maturity; no consideration given to diversity of original plot.
- If this fence is erected can we be assured the Trees/Shrubs between the

acoustic fencing and the boundary will be maintained to a acceptable height of 2.1 metres same as the acoustic fence. Due to the land levels and short gardens we do not wish our light to be diminished and to feel hemmed in.

- The alarm nuisance which the tenants have identified from a unused building on the land which the Environmental Protection Service couldn't identify as a car alarm is still going off on a daily basis, video clips supporting this have been sent to councillor Dianne Hurst.

Drainage

- No consideration given to the drainage of the site; the site is nearly entirely tarmacked with no opportunity for natural drainage.
- Not clear where surface water run off will drain to; a sustainable urban drainage solution such as a soakaway should be included.

Design

- In 2019, the tenants encroached onto land to the side which is now called a storage area, with temporary permission later granted and to correct an eyesore caused by their own doing.
- Jet wash and car sales not in keeping with either of two brick-built businesses or with amenity of Handsworth village and proximity of residential properties.
- Other businesses conduct business inside their premises and customers are directed towards the front and not the rear of their sites unlike the car lot
- Car sales cabin sited well back behind building line of other businesses in the row, i.e. Wilsons Carpets and Parkgate Mobility.
- Discrepancy in heights of acoustic fence.
- Any acoustic fencing should be aesthetically pleasing and should extend along the entire boundary.

General

- Submitted report states that car sales have been operating for several years but fails to mention that objections have been voiced from the very beginning towards both the car sales and jet wash site. Previous objections to all previous applications still apply.
- Storage area is no different to the sales forecourt with no divider denoting each area; vehicles put on land before base complete.
- Consultation with residents of Parsley Hay Gardens has been non-existent; this is contrary to guidance; not been consulted correctly by SCC.
- No limitation is enforced on size of vehicles being sold; type of vehicles being sold on the site is expanding and larger vehicles including transit type vans, flat back trucks and a motor home, which will tower above any screening proposed.
- Rear of site used as car sales not car storage.

Comments from Councillor D Hurst

- Reference is made to the objections to the previous applications which were withdrawn prior to going before Members at the committee meeting and officers have since served an enforcement notice with a requirement to cease trading and vacate the site.
- The business has continued to trade, including on weekends, Sundays and Bank

Holidays despite the temporary permission having expired and the enforcement notice having been served.

- The nuisance from cars, staff and customers continues. I met residents with Clive Betts MP on a Sunday before the scheduled planning meeting. From the houses, the cars could be seen close to the boundary fencing. On the highway, on a clear way, a vehicle was parked that had price signs in the window and advertised for sale on the company's website. Other cars have similarly been seen parked there before and since.
- It is also believed that the company use the car park at the old Turf Tavern for overflow parking. Residents and local businesses complain that their excess stock prevents any of their customers from parking in customer spaces and using other local businesses.
- Noise nuisance continues. Residents contacted Environmental Services with logs of regular alarms sounding and a sequent site visit was held at which the officer explained that CCTV records could only prove one instance of the alarm being linked to a car on the site, which had been removed. The alarms, clearly audible, time and date stamped, were not of sufficient duration to constitute a statutory nuisance, which was terribly disappointing.
- Since this time, residents have sent a further 14 videos recording alarms from their bedroom windows. These recordings varied in duration and the alarm was identified and subsequently confirmed by an officer of the SCC and remediation agreed. Residents still had to endure shrill alarms sounding early in the morning on every day of the week including Sundays, Bank Holidays and holy days.
- The clips have been shared with the Antisocial Behaviour Mediation and Resolution Officer of the SCC, who is considering a Community Protection Order, which would provide some measure of relief for the residents of Parsley Hay Gardens.
- The residents have experienced such noise nuisance, intimidation, and lack of peaceful enjoyment of their own homes for many years because of the operation of this business.
- When I first became aware of the enduring nuisance caused by the operation of this business at the planning committee in 2018, I met with residents, determined to work with officers and the business to make a good neighbour. This has failed. The business has no interest in being a good neighbour. They operate a model of do it, then ask for permission and if the outcome doesn't suit, do it any way. Four enforcement actions by SCC officers during this temporary period of operation only underlines this.
- The residents are in despair; shouting at me and crying and their health and wellbeing being affected. They continue to keep logs, report infringements and endure, with tens of emails and videos in addition to those referred to in my previous objection letter for the previous applications withdrawn 4th February 2022. One resident is so overwhelmed that they have requested contact details for the Ombudsman.
- Previous businesses who rented the land submitted change of use applications in 2011 and 2013 and ignored conditions and planning regulations, so nuisance land use has resulted in their resistance being low.
- The actual site itself is another, intractable and insurmountable issue. The difference in land levels between is such that any business running on the site will overlook the rear gardens of Parsley Hay Garden properties and enable customers, staff and visitors to look into their bedrooms. Residents have no amenity value in their own homes. They cannot use their bedrooms without having the curtains closed; they cannot have their windows open because of

fumes from vehicles on site entering; they cannot sit out in their gardens because of overlooking; and they cannot allow children into garden because of overhearing swearing from staff on site and witnessing of public urination up against the boundary fence.

- The removal of the mature hedgerow and trees to the rear of the site in order to allow additional sales space removed a visual and acoustic barrier. This was subject to enforcement action but planted whips and shrubs will take more than one generation to equal what was lost. This also has the effect of allowing residents a longer view onto the other side of Handsworth Road.
- Rear gardens of Parsley Hay Gardens are small. This doesn't mean that the residents shouldn't be entitled to a quality of life in their own homes. Noise nuisance, overlooking, vehicle movements and customer intrusion all mean that current and future residents will be subject to an unacceptable and unreasonable level of disruption and intrusion on their quality of life.
- The business is successful but is too large for the current site, which is overdeveloped, which makes it inappropriate for its current location, especially given the differing land levels. The insurmountable difficulty posed by the difference in land levels, combined with the small gardens makes this inappropriate development. It is hoped that it will continue to thrive, but on a different site. Its relocation will allow residents to thrive in their own homes and remove a detrimental impact on other existing local businesses.
- Given the current lack of a five year housing supply it is hoped that future applications for housing and changed designation for this site would be considered.
- A small section of fencing will not provide adequate noise nuisance. It will also dominate the gardens of the properties on Parsley Hay Gardens, overlooking and shutting out light.
- I do not consider the proposed length of fencing adequate for purposes. It is the size of the site, the size of the business on it: the difference in land levels and the small but adequate under normal circumstances gardens to the homes that is the issue. No fencing can change that. The business needs to be encouraged to find a new home elsewhere, this planning application refused and that enforcement enforced. Only then will residents be able to regain the peaceful enjoyment of their own homes without noise nuisance and overlooking.

Comments from Councillor M Rooney

- It is clear from discussions with other local elected members local residents that the business has had little or no regard for the comfort, privacy or well-being of their neighbours.
- Increased number of cars, ignoring permitted opening hours, removal of greenery and barriers to noise, alarms persistently going off at all hours amongst other things.
- The tenants have consistently ignored warnings from the planning department and in my view, owing to their conduct, they have forfeited the right to remain on the site.
- Wasn't notified about the amendment but nothing in essence of any significance has changed; the changes are cosmetic and frankly do nothing to address my previous objections.

Comments from Clive Betts MP

- Having visited the site and neighbouring properties I have every sympathy and give full support to my constituents and the objections raised for the reasons set out below:
- Parsley Hay Gardens is a quiet cul-de-sac where the houses have been for decades with some residents also been there for as long. The houses have been there much longer than the business. It is unfair to say you have a small garden and that is the problem. Steps need to be taken to ensure that their privacy and quiet enjoyment of their homes is not in any way compromised.
- Vehicles on the grounds of the car showroom are significantly above the level of the houses, with bedrooms of houses being at the same level. What happens, therefore, is not merely the residents look straight onto a car lot only a few yards from the back of their homes, but they have on a regular basis the sales reps from the company and customers coming and looking directly into their homes. This is an intrusive of privacy which simply should not be allowed to happen.
- There is also a noise issue resulting from cars moving around, revving engines, loud talking; customers and sales reps, mobile phones, swearing and using abusive language.
- Residents have also stated that workers are urinating against the fence immediately behind their homes.
- If the business should continue, and I do not really understand why planning permission was given in the first place, because whatever conditions are applied, they will, I suspect, be ignored until enforcement repeatedly happens. I understand that there has already been three enforcement actions taken which gives an indication of the approach this company takes when planning permission is given with conditions.
- If conditions were imposed, the fence should be right the way down and back of the site, not just part way down as currently proposed. It is not reasonable to expect residents there to continue to maintain fences to shield their property from their activity. The fence should be of sufficient height that the residents cannot see the cars or the workers and people cannot see directly into their homes.
- Secondly, the fence should have acoustic qualities. It is not reasonable that people should put up with this given they were there enjoying their gardens before this business arrived. It is hoped that Environmental Health would be asked to specify the quality of the fence and to ensure that the quality is then erected.
- Thirdly, there should be a physical gap between the boundary of constituent's properties and the point at which the cars are actually parked and the business operate. Cars should not be parked right up to the fence.
- Residents have complained that cars regularly park on the road with 'For Sale' signs and prices in their window. One such vehicle was on the road at the time of my site visit one Sunday morning when the business was not supposed to be open. What enforcement action is to be taken to put in place against the business that is regularly flouting the planning conditions about parking and selling vehicles from the road.
- If permission is renewed these conditions must be enforcement absolutely to make sure constituents have a reasonable quality of life. What they are currently having to put up with is unreasonable.

PLANNING ASSESSMENT

In assessing this application, the main issues to consider are land use policy, effect on residential amenity and highway safety considerations.

Policy Background

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The National Planning Policy Framework (NPPF) provides the framework for the planning policy and development within England. The overarching principle is to ensure that new development is sustainable.

The Council's development plan comprises the Core Strategy which was adopted in 2009 and provides the overall spatial strategy for the period of 2008 to 2026 and the saved policies of the Unitary Development Plan (UDP) which was adopted in 1998. Whilst the UDP pre-dates the NPPF, the policies should not be considered out-of-date and should be given due weight, according to their degree of consistency with the NPPF. The NPPF provides that the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given (para. 219). The NPPG provides further guidance on this but it does state that it is up to the decision-maker to decide the weight to give to the policies.

In all cases, the assessment of any development needs to be considered in light of paragraph 11 of the NPPF, which provides that when making decisions, a presumption in favour of sustainable development should be applied, and that where there are no relevant development plan policies, or where the policies which are most important for determining the application are out of date (e.g. because they are inconsistent with the NPPF), planning permission should be granted (the tilted balance) unless there are particular areas or assets of particular importance, which provide a clear reason for refusal (e.g. Green Belt, risk of flooding, certain heritage assets); or any adverse impact of granting permission would significantly and demonstrably outweigh the benefits of the development.

Set against this context, the development proposed is assessed against all relevant policies in the development plan and the NPPF below.

Land Use Policy

The site lies within a designated Business Area, as defined in the Unitary Development Plan. UDP Policy IB7 permits a variety of uses within such areas, but in this case, a car sales use is defined as a 'Sui Generis Use' and therefore should be considered on its own merits, although it is clearly a commercial business use. The existing car sales premises has been continuously used for such purposes for a number of years and the last planning permission (ref: 19/00674/FUL) was granted 18th February 2020, for a temporary period of 2 years. The temporary consent was issued on the basis that there were long-term aspirations for comprehensively developing the wider site and an ongoing car sales lot was not a desired long-term use.

This application seeks to continue using the existing car sales premises including the vehicle storage area. The principle of allowing a car sales use in this location has already been established, by virtue of the existing planning permissions. In deciding the last application, the continued use of land for the sale and display of cars was

considered acceptable, although only on a temporary basis, given the long-term aspirations for the wider site and due to amenity concerns. In considering the use of the additional vehicle storage area it was considered to fall within the same 'Sui Generis' use classification. As the site was set back behind an existing car wash facility, accessible via an existing car sales site and utilising the land for this purpose it was considered to be logical and not an unreasonable request. The principle of allowing the additional storage area was considered acceptable on a temporary basis to allow the impact of the operational business to be properly understood over that time period.

The application has previously been assessed in terms of UDP Policy IB9 'Conditions on development in Industry and Business Areas' in respect of its use, which was considered acceptable on the basis that it would not result in a significant change to the percentage of preferred uses in the area and therefore not prejudice the dominance of preferred uses in the area. However, the application does need to be considered in respect of other provisions of the Policy, specifically part (b) which relates to residential amenity and part (f) which relates to transport issues; both of which are considered later in the report. The Policy is consistent with paragraph 11 of the NPPF in that it is necessary to plan positively to meet development needs and paragraph 119 which requires policies and decisions to promote an effective use of land in meeting the needs for a range of uses.

In considering the current application, there have been no further policy changes which should be taken into account when assessing this application. It is proposed that the site would operate in the same manner with no changes indicated. The applicant is seeking to continue using the site as a car sales lot with additional vehicle storage on a permanent basis. Part of the site has operated as a car sales lot as far back as 2011, although this has not been a continuous use over that time period.

Given that it is proposed to permanently use the site for the above purposes it is relevant to consider the guidance set out in paragraphs 55 and 56 of the NPPF, which relates to the use of planning conditions. Paragraph 55 advises local planning authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 56 requires planning conditions to be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other aspects.

Circular 11/95 sets out the guidance in relation to the use of planning conditions and, particular to this application, the use of temporary permissions. Paragraph 109 does permit the use of temporary permissions but the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenities of the area. Where such objections to a development arise they should, if necessary, be met instead by conditions whose requirements will safeguard the amenities. Where it is not possible to devise such conditions, and if the damage to amenity cannot be mitigated, then the only course open is to refuse permission. These considerations will mean that a temporary permission will normally only be appropriate, as was in this case, when a trial run is needed in order to assess the actual effect of the development on the area.

Paragraph 112 of the Circular provides that a further temporary permission should not normally be granted and that during a trial period it should be clear whether permanent permission or a refusal is the right outcome. Usually, a second temporary permission

will only be justified where highway or redevelopment proposal have been postponed. Temporary consents have been issued on the basis that the site would, in the future, be comprehensively redeveloped and, to address amenity concerns. At present there are no plans to redevelop the site but rather a desire of the applicant to continue using the site as in situ. In light of the above, and the fact that the site has had a lengthy trial period to allow potential redevelopment opportunities and to assess the impact on amenity it is now considered necessary to decide whether to grant a permanent permission or to refuse planning permission.

The development does provide a source of employment, approximately 7 members of staff. Should the proposal not be acceptable, the resultant economic loss and impact on the livelihood of staff will need to be considered. The NPPF, in paragraph 80 requires that planning policies and decisions should help create the conditions in which business can invest, expand and adapt; and that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. In this case, it will be necessary to weigh the benefits of the development against the impact of the development on residential amenity.

Amenity Issues

UDP Policy IB9 permits new development or changes of use provided that it will not cause residents or visitors in any hotel, hostel, residential institution or housing to suffer from unacceptable living conditions.

This is consistent with NPPF, paragraph 130 f) which states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Paragraph 185 of the NPPF is also relevant and states that “decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site of the wider area to impacts that could arise from the development.”

The site is set within a predominantly commercial environment on this stretch of Handsworth Road, however, there are residential properties immediately at the rear of the site (Parsley Hay Gardens) which are at a lower level and have short gardens abutting the site. A substantial number of objections and concerns have been raised by the residents of these houses over a number of years and as a result of the direct neighbour notification in relation to this application.

Noise

The proposal seeks to continue using the site for the sale and display of cars, with ancillary vehicle storage. The use generates noise, owing to customers visiting the premises; the movement and cleaning of vehicles, whether it is those which are on display or customer vehicles entering and leaving the site. The background noise levels on Handsworth Road (a dual carriageway) are relatively high owing to traffic and also noise from a hand car wash facility which is adjacent to the site and fronts directly onto Handsworth Road.

Since approximately 2018 there have been consistent complaints received from local

residents in respect of noise and activities taking place on the site; and concern that planning conditions previously imposed were not being complied with, for example in respect of customer parking, hours and days of use, drainage, and landscaping. Appropriate enforcement actions have been carried out to address the planning conditions and advice was given by Council Officers to the applicant and landowner to address outstanding issues. Temporary planning permissions have been issued to allow monitoring of the site to see if the problems persisted.

In respect of the current planning application, concerns have been raised by residents with regard to noise, amongst other issues, and in particular the movement of vehicles, car engines left running, car alarms sounding off, shouting, and talking, including inappropriate language.

At the rear of the site are residential properties (Parsley Hay Gardens) which have very short rear gardens and are set down below the application site, such that their first-floor windows face directly onto the application site. Vehicles for sale take up the majority of the site, with the nearest vehicles being set back only 3 metres from the common boundary with the Parsley Hay Gardens rear curtilages. There is a mix of boundary treatments along this boundary with fencing of varied heights, and trees/shrubs. Trees and shrubs have been planted adjacent to the boundary and it is anticipated that this would develop over time and improve the screening of the site. However, at this present time it is acknowledged that the planting is not yet of sufficient size to fully screen the site. It is understood that the applicant or landowner removed some mature vegetation from this boundary (which would not have needed permission) which has further exposed the commercial activities of the site to the houses behind.

The applicant maintains that the proposed use of the site does not generate significant noise and disturbance. They state that the business operates an appointment system for customers to come and visit the premises having viewed the vehicles online. They state that the vehicle is then relocated within the site in preparation for the customer to view it and potentially to take it for a test drive. The applicant has stated that 90% of enquiries are generated from online enquiries, with appointments made to view the vehicle for sale; and 10% is from 'walk-on' enquiries.

During the week there are 3 sales people operating on the site with up to 3 additional yard staff, thereby dealing with a maximum of 3 customers at any given time. However, on a Sunday there would be only one sales person and yard staff employee, thus, only one customer dealt with, by appointment at any given time. Given that an appointment system is in operation and if for example a typical day would generate 6 sales, this would suggest potentially 6 vehicles moved during the day, with any subsequent movement of vehicles elsewhere within the site to accommodate the relocation.

There is a sales office building which is set away approx. 3 metres from the common boundary with no. 22 Parsley Hay Gardens. The building is occupied by employees and there are visiting members of the public entering and leaving the building.

There will inevitably be some noise and activity generated by customers visiting the site, with discussions taking place inside the sales office building and outside on the forecourt. It is these discussions, as well as employee voices at other times, together with vehicle movement and car engines that are disturbing the residents of Parsley Hay Gardens. Whilst the noises individually may not be significant owing to the relatively high background noise levels, it is the combination of the different noise sources and

regularity at which they occur that is of concern and they take place in very close proximity to the residents of Parsley Hay Gardens and their rear curtilages because there is no buffer strip between the two uses.

Leaving car engines running for a lengthy period can be noisy and creates an unpleasant environment from car exhaust fumes. If this occurs on a regular basis, near to a residential property or its curtilage it would result in harm to the living conditions of the resident of the property affected. It is unclear as to how often this occurs. In light of this fact it is considered that a condition requiring no car engines to be left running other than when moving a vehicle within the site would be an appropriate mechanism for controlling this. An additional condition preventing the storage and/or display of commercial vehicles on the site would also help to address the noise and improve the outlook of the site.

To help mitigate noise from the site, the applicant now proposes to erect a 2.1 metres high acoustic fence along the south-west edge of the designated storage area and car sales forecourt, alongside an existing clay bund, and to the rear of an existing car sales office building. The fence would be close boarded with a pressured pre-treated finish, which would provide longevity and would weather over time to a natural grey timber finish. An existing portable toilet block will be repositioned to the other side of the sales office adjacent to the Wilson Carpets boundary. The fence would help screen the site from a visual point of view, reduce noise levels from within the cabin and outside on the forecourt, and would prevent direct overlooking from the site onto properties on Parsley Hay Gardens.

It is relevant to note that the Environmental Protection Service (EPS) has reviewed the information they hold in respect of this site and has confirmed that they have not received any noise complaints prior to 2018. In recent years, the EPS has been informed of concerns raised by local residents via Councillor Diane Hurst and Clive Betts MP. These have included antisocial behaviour, bad language, excessive construction working hours, and the sounding of car alarms.

The EPS received complaints from local residents in early September 2019 alleging that they were disturbed due to excessive construction noise and working hours on the site, which included resurfacing works and in particular, at weekends. The EPS can take action under the Control of Pollution Act 1974 if contractors at building sites cause excessive noise. As a general rule, where residential occupiers are likely to be affected it is expected that noisy works should only be carried out during the hours of 0730 to 1800 hours, Mondays to Fridays; and 0800 to 1300 hours on Saturdays; with no works which are audible at the site boundary carried on Sundays and Public Holidays.

The incident was investigated and discussed with the management of Motor Gurus and contractors on site. They apologised for any inconvenience and ensured the site and all contractors working within the specified hours. The programme of resurfacing works was completed at the end of September 2019, with no further complaints received in respect of this matter, and no enforcement action was taken.

The EPS received complaints from local residents in early February 2022 alleging that they are disturbed by excessive noise of car alarms being activated, in particular late in the evening, through the night, and at weekends. This was investigated and residents were asked to keep a log of dates, times etc when the noise was audible.

A log was provided with information of 12 disturbances between 17th February 2022 and 7th March 2022. CCTV footage reviewed by the EPS of the alleged dates and times. Evidence showed that only on one occasion a car alarm was active, which was approx. 0500 hours on 17th February 2022 and not on any of the other 11 occasions. This information was discussed with the residents and Councillor Hurst.

Following the above, further complaints of the same were received from residents in April/May 2022 including video evidence. Upon further investigation, Motor Gurus established which alarm was causing the issue, potentially a faulty motion sensor. The alarm is attached to the dormant building located within the footprint of the car wash, however, it is linked to the security system of Motor Gurus.

Motor Gurus have instructed a security firm to upgrade the system to 24 hour monitoring with a direct link to management when the alarm is activated. The security company will also attend the site as far as practically possible. The said alarm will be relocated to the furthest distance away from the residents. The security system will be fitted within a 20min cut off device which is in accordance with current British Standards and The Code of Practice on Noise from Audible Intruder Alarms. This is industry wide practice and is considered satisfactory. No further complaints have been received to date, and no enforcement action has been taken. The EPS are awaiting confirmation from Motor Gurus on completion of the above improvement works.

The applicant has submitted a Noise Assessment which assesses noise from vehicle movements, closing of doors and voices from staff and customers. The assessment has been carried out using an evidence-based approach. The calculations shown in the report shows an increase of 2 dB(A) in ambient noise levels resulting from on-site operations. The report concludes that an increase in ambient noise level of up to 3 dB(A) is not considered to be significant. The EPS has reviewed the document and concur with this statement and considers the report to be satisfactory.

In light of the concerns raised by residents, the noise consultant has recommended the installation of a 2.1 metres high acoustic barrier adjacent to and along the south-western boundary. The proposed barrier offers a reduction of noise from the site by 15 dB(A), which is considered satisfactory. Further documents which, includes an email from the acoustic consultant, and details of the proposed fence and installation guide have been submitted in support of the application have been reviewed and considered acceptable. The proposed measures are considered to be reasonable and practicable and should mitigate any noise from the site, ensuring a satisfactory environment is maintained for residents of Parsley Hay Gardens.

Hours of Use

In February 2020, planning permission (19/00674/FUL) was granted for a period of two years, to allow the continued use of the car sales business and the vehicle storage area between the hours of 0800 and 1800 hours, Mondays to Saturdays; and between 1000 hours and 1600 hours, Sundays and Public Holidays for a temporary period of one year. This was as a result of concerns raised by residents of the premises operating beyond the permitted hours and to allow the opportunity to further monitor the site and record any noise nuisance and non-compliance of planning conditions. In coming to this decision, the need to balance the needs of the business and the amenity of the adjacent residents were considered.

The applicant is seeking to continue using the site and, for the same hours and days of use, but on a permanent basis. Letters of objection have been raised from local residents who have stated that the premises have been in use late into the evening, beyond the permitted opening hours, with noise generated as a result of vehicular movements, car engines left running and people chatting and shouting. The permitted hours of use, Mondays to Saturdays are consistent with other local business premises. In respect of opening on Sundays and Public Holidays, this is not considered to be unreasonable on a strategic road, subject to complying with the recommended conditions which are in place to control the development and prevent any form of nuisance from occurring. There is no objection from the EPS with regards to the proposed continued hours and days of use throughout the week.

Given that the residents of Parsley Hay Gardens are particularly vulnerable, as they have short rear gardens it is particularly important to control the development to ensure that the development does not have a detrimental impact on their living conditions. The objections from residents and Councillors demonstrate that there is clearly a considerable concern about the use of the site, with the emphasis being the impact on the nearest affected neighbours. Whilst an acoustic fence will help mitigate any noise from the site and help to screen the activities, there is substantial opposition to the continued use of the site, which is reported to be not operating within the hours permitted.

Amenity Conclusion

Having assessed all the issues it is considered that, on balance, the continued use of the full extent of the site for car sales and storage is acceptable in amenity terms with the installation of the acoustic fence as now proposed, which is not something which has been proposed in previous applications. It is acknowledged that the rear gardens of properties on Parsley Hay Gardens have particularly short rear gardens which face directly onto the site but given that it is now proposed to provide a 2.1 metres high acoustic fence along the rear of the site, as recommended in the noise assessment accompanying the application, it is concluded that this would provide a suitable barrier between the residential and commercial use and would provide a satisfactory environment for the existing residents. The acoustic properties and physical barrier would mitigate against any noise and disturbance, and any direct overlooking resulting from the site onto the main private amenity areas of these properties. It would not address overlooking of first floor windows and whilst this is not ideal, the business designation of the application site has to be factored into the assessment. As the car lot operates during daylight hours it is not considered in this instance, to be unreasonable.

The acoustic fence which would be set away from the common boundaries of Parsley Hay Gardens for the majority of its length, along the edge of the vehicle storage area, would screen the site, providing an acceptable outlook from the rear gardens of rear facing properties. The design of the fence has the appearance of a high quality timber garden fence. It is acknowledged that the outlook from the first floor windows of Parsley Hay Gardens will remain relatively unchanged (taking into account the proposed hardsurfacing etc), but again, given the site's designated business area, this is not in itself a reason for resisting the proposal.

It is on this basis that the proposal, on balance, is considered acceptable as the applicant has now proposed suitable mitigation measures to deal with noise and disturbance, removing the current harm caused by the business to existing residents,

and would allow the continued use of the business. As such, the proposal would meet the requirements of UDP Policy IB9 and paragraphs 130 f) and 185 of the NPPF.

Highway Issues

UDP Policy IB9 states that a site should be adequately served by transport facilities and should provide safe access to the highway network and appropriate off-street parking. This is consistent with paragraph 110 of the NPPF which requires safe and suitable access to the site and for any highway safety issues to be mitigated. It goes on to state in paragraph 111, that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.

The current layout of the site was agreed as part of the previous planning permission. The layout of the site is considered to be satisfactory, allowing the movement of vehicles within the site and provides customer parking as required. The running lane within the site has not been tarmacked to date but would form part of the proposed re-surfacing works for the site, which would be conditioned to be carried out or details entered into to secure the works are carried out within a reasonable time period.

Concerns have been raised by objectors in relation to the display of vehicles for sale on the public highway. The extent of the site has been increased, therefore allowing more vehicles to be stored on the site. The applicant has stated that all vehicles are parked on the site. However, it has been observed by others that vehicles for sale have been parked on the highway, which is not acceptable. In respect of any vehicle stored on the highway this would be a matter which is enforced by the Police and the DVLA. It is also relevant to note that it is an offence to park vehicles for sale on the highway under Section 3 of the Clean Neighbourhoods and Environment Act, 2005.

Objector comments also refer to vehicles being parked along the Handsworth Road frontage, blocking the footway, making it difficult for pedestrians to walk past, especially those in wheelchairs or with buggies. It is unclear as to whether any or all of these vehicles relate to the application site, as it is evident that employees of neighbouring uses and visitors to other business premises do park along the Handsworth frontage. Any traffic related offences would be for Parking Services and the Police to deal with and these issues have been referred to them in the past.

On this basis, it is not considered that the proposal would have a detrimental impact in highway terms and as such will accord with the local development plan and the NPPF.

RESPONSE TO REPRESENTATIONS

The use of inappropriate language and the behaviour of customers are not specifically planning issues, although they do add to the argument that the living conditions of residents are adversely affected due to the activities taking place on the site

Issues relating to floodlights shining in bedrooms, tannoy system installed, and playing loud music are all issues which have previously been addressed and action taken to resolve such issues.

Cars parked on designated car wash site – Vehicles for sale at the premises are valeted at the adjacent car wash site before being sold.

Lack of consultation from applicant – this is not a statutory requirement of the applicant given the scale of development but the applicant is encouraged to liaise with occupants of adjacent properties.

Little information submitted – Satisfactory information has been submitted in support of the application to enable an appropriate assessment, in particular a technical noise assessment.

Consultation – Local residents have been consulted by the Local Planning Authority appropriately and in line with Council guidelines.

Drainage matters – The proposed drainage details for the site have been reviewed by the Lead Local Flood Authority and were approved under application no. 19/00674/COND3.

Planting/Landscaping – The details for the site have been reviewed by the Landscape Officer and were approved under application no. 19/00674/COND2.

SUMMARY AND RECOMMENDATION

In land use terms, the use of the site for car sales and storage of vehicles is considered acceptable in principle in this commercial location as defined in the Local Development Plan. This is however subject to maintaining a satisfactory living environment for existing residents.

Temporary planning permission has been granted previously for the site, as it was anticipated that the site would be comprehensively redeveloped at some future point. Owing to amenity concerns, it was also considered appropriate to grant permission for a temporary period in order to monitor the site. Given the objections received which highlight issues relating to noise, nuisance, and non-compliance with opening hours, it is evident that the use of the premises, as it operates at the moment, is impacting on the amenities of existing residents of Parsley Hay Gardens.

The imposition of planning conditions has not been effective to control the use of the site and prevent harm to the existing residents. This has largely been due to the lack of separation and the lack of any kind of significant buffer between the use and residential gardens, together with the land level differences between the two.

In order to address this issue specifically, this latest application was supported by a noise survey and, as a result, the applicant now proposes to erect a 2.1 metres high acoustic fence along the south-western edge of the site. This is specifically designed to address the concerns relating to noise and disturbance as well as to provide a suitable visual screen (with the appearance of an attractive timber garden fence) beyond an existing planting strip (which over time will become established).

The continued use of the site does not raise significant highway concerns, provided that the layout of the site is maintained in accordance with the approved plans. This is secured via condition.

The proposed permanent use of the site as a car sales area with ancillary vehicle storage is considered acceptable. The business would operate on days / hours which are similar to other nearby business premises and with an appropriate acoustic barrier

to the site. The technical noise report accompanying the application demonstrates that this will achieve a satisfactory living environment for residents of neighbouring properties. The Environmental Protection Service has confirmed that they are satisfied with the findings of the report and with the proposed acoustic attenuation measures, subject to conditions being imposed to control the hours of use.

For the reasons outlined in the report, it is considered that the proposal would comply with UDP Policies IB7 and IB9 and paragraphs 130 f) and 185 of the NPPF.

On this basis, the planning application is recommended for approval subject to the listed conditions.

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