

TM/95/00003/LDCE lawful development 5 May 1995
 certifies

Lawful Development Certificate Existing: for vehicle sales with provision of servicing, and repair and breakdown facilities and full range of vehicle services including hire

TM/04/02498/OA Grant With Conditions 21 September 2004

Outline Application for the demolition of existing cafe, garage and bungalow and remove hardstanding and erect 3 no. B1/B8 use buildings with parking

TM/06/03909/FL Approved 23 March 2007

Construction of single storey office with disabled/unisex toilet

TM/07/04481/OA Approved 28 March 2008

Outline Application for demolition of all buildings and construction of new showroom and workshop building in connection with car sales (Re-submission)

TM/09/02132/FL Approved 26 March 2010

Change of use of land and building from residential to the use for the display and sale of motor vehicles including the provision of car parking and vehicle display areas. Two storey front extension and alterations to the building

TM/09/02384/FL Approved 26 March 2010

Retrospective application for change of use of former cafe building and associated land for the display and sale of motor vehicles, including the provision of car parking and vehicle display areas

TM/10/00938/FL Approved 9 July 2010

Retrospective application for the change of use of the former Venture Cafe building, associated land and residential land for the display and sale of motor vehicles. Demolition of the existing bungalow, garage and office building (formerly Valrosa). Erection of a two storey extension to the former Venture Cafe building for office use in connection with the display and sale of motor vehicles. Provision of car parking and vehicle display areas

TM/10/03236/RD Pending

Details of surface water drainage pursuant to condition 4 of TM/10/00938/FL (retrospective application for the change of use of the former Venture Cafe building, associated land and residential land for the display and sale of motor vehicles. Demolition of the existing bungalow, garage and office building (formerly Valrosa). Erection of a two storey extension to the former Venture Cafe building for office use in connection with the display and sale of motor vehicles. Provision of car parking and vehicle display areas)

TM/11/01024/AT Application Withdrawn 22 September 2011

Free standing internally illuminated pylon: advertisement for existing business, showing logo, telephone number and award winner statement (retrospective)

TM/11/00669/FL Approved 14 December 2011

New vehicle preparation bay with associated car parking area and photographic studio (retrospective)

TM/11/01024/AT Application Withdrawn 22 September 2011

Free standing internally illuminated pylon: advertisement for existing business, showing logo, telephone number and award winner statement (retrospective)

TM/11/01364/RD Invalid

Discharge of Condition 6 (lighting) pursuant to planning permission
TM09/02132/FL

TM/11/02658/AT Approved 7 December 2011

Advertisement for existing business, showing logo, telephone number and award winner statement.

- 3.1 The enforcement history is that Enforcement Notices were served in 2005/2006 in relation to three sets of lights, portable cabins and additional tarmac on the highway land. An appeal on the Enforcement Notice relating to the lights was withdrawn so the enforcement notice is extant. The Enforcement Notice on the cabins was appealed but upheld. The notice was thereafter complied with. The tarmac was accepted by KCC so no further action was taken by TMBC.

4. Alleged Unauthorised Development:

Landscaping

- 4.1 Condition 3 (landscaping and boundary treatment) of planning permission TM/10/000938/FL has been breached. The condition requires that landscaping be

undertaken in accordance with the approved plan 1101C.04 before the end of 2010. Members may recall that a landscape condition was imposed on the valeting bay permission but that condition was not being breached at the time of writing this report; an update will be included in a supplementary report.

HGV Turning Area

- 4.2 Condition 4 (HGV turning area) of planning permission TM/10/000938/FL has been breached. The condition requires that the facilities as shown on the approved plan 1101C.04 shall be provided within 2 calendar months (i.e. by 9 September 2010) and retained free from obstruction thereafter. Although the turning area was provided, it is now obstructed by a set of railings, a gate and security lights.

Drainage

- 4.3 Condition 5 (surface water drainage) of planning permission TM/10/00938/FL required that the details were to be submitted for approval and should specifically deal with rainwater recycling and the installation of petrol interceptors. Surface water drainage details have been submitted and are a current application under ref TM/10/03236/RD. There has been a protracted negotiation with the applicant's agent in terms of dealing with concerns of the Environment Agency and there is still some unanswered information.
- 4.3.1 Members may recall that a supplementary foul and surface water drainage condition was imposed on TM/11/00669/FL but that condition was not being breached at the time of writing this report; an update will be included in a supplementary report.

External Lights

- 4.4 Condition 7 (external lighting) of planning permission TM/10/000938/FL has been breached. The condition requires that there shall be no external lights without the prior approval of the Local Planning Authority. Members may recall that a supplementary lighting condition was imposed on TM/11/00669/FL but that condition was not being breached at the time of writing this report. However, external lights have been erected. In themselves, these are operational development requiring planning permission in their own right and are therefore in breach of planning control notwithstanding the condition imposed. These comprise 10 illuminated bollards, 11 lamp posts and over 40 halogen floodlights on posts or affixed to buildings.

Advertisement

- 4.5 A condition was imposed on the consent for the 2 panel sign that required the in situ illegal sign to be removed within 3 weeks and that condition was being breached at the time of writing this report. However, the 3 panel advertisement at the site frontage is a breach of advertisement control in its own right, which is an offence.

5. Determining Issues:

Landscaping

5.1 Regarding the non-compliance with condition 3 of planning permission TM/10/000938/FL, although some landscaping, especially at the site frontage, has been implemented it is clear that the site has not been fully landscaped in accordance with the approved plan, being deficient in the amount of shrub and tree planting within the site and on the boundaries. It should be noted that some existing trees on part of the eastern boundary with Bonheure have been removed by the owner of Bonheure as apparently they were under his ownership.

5.1.1 When planning permission TM/10/00938/FL was granted it was felt that the landscaping was required to protect and enhance the appearance and character of the site and the locality. The failure to undertake the required landscaping results in an urban appearance to the site within the countryside/Green Belt. It is considered that the landscaping does need to be implemented in accordance with the approved plan to soften the appearance of the site and improve the visual amenity of the area. This is to accord with Section 197 of the Town and Country Planning Act 1990 and Policies CP1, CP3 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and Policy SQ1 of the Managing Development and the Environment DPD.

5.1.2 An Enforcement Notice should be served.

HGV Turning Area

5.2 The HGV turning area condition has been breached as the area specifically shown on the relevant plan referred to in the condition is now obstructed by a set of railings, a gate and security lights. However, there needs to be further investigation by way of a further detailed site inspection to ascertain whether there is alternative unobstructed space on the site to turn an HGV so that the expediency of taking action, in the form of either a Breach of Condition Notice or an Enforcement Notice, can be assessed. Members are asked to note that a Planning Contravention Notice (PCN) is likely to be served as part of this process.

5.2.1 On this matter, Members will note that whilst the condition aimed for the provision of on-site facilities for unloading by car transporters, the condition does not expressly prohibit off-site unloading and deliveries by car transporters - such a control is outside the scope of the Planning Acts. The use of highway land for unloading of vehicles from a car transporter and any issues arising therefrom are a matter for the Highway Authority.

Drainage

5.3 Condition 5 (surface water drainage) of planning permission TM/10/000938/FL required that the details were to be submitted for approval and should specifically deal with rainwater recycling and the installation of petrol interceptors. Details have

been submitted for the rear part of the site in the pending application TM/10/03236/RD. The site lies over an Aquifer and the EA has outstanding queries as follows:

- The discharge point of the soakaway relative to the Water Table must be high enough to not cause pollution of potable water.
- Oil interceptors need to be correctly sized and details are needed of planned maintenance schedules.
- Need confirmation that the effluent from car washing is on a dedicated area (i.e. contained by kerbing) and does not discharge to any fuel interceptors as the detergent interferes with their proper functioning
- Washdown effluent that discharges to a foul sewer must be with the consent of the sewerage undertaker. (NB Southern Water confirms that there is no such Trade Effluent Consent.)
- In the absence of a Trade Effluent Consent, the washdown effluent needs to be collected in a sealed tank, recycled for reuse or disposed of off-site.

5.3.1 I propose that the agents be given one further opportunity to promptly respond to the concerns of the EA and to alter the “red line” area to the correct extent. Failing an adequate response, the reserved details application will need to be refused. Members are asked to note that it is likely to be necessary to serve a PCN to ascertain whether or not the above concerns of the EA are unfounded. That will allow a judgement as to whether further action in the form of an enforcement notice is expedient.

External Lights

5.4 Details of the lighting as erected (with minor errors in the number of floodlights) have been submitted following investigation by the Planning Enforcement section. However, the application has been invalid since May 2011, principally because there was no Lighting Impact Study which is a requirement for this form of extensive external lighting in a rural area. No such study was ever submitted despite numerous requests to the site owner via his agent.

5.4.1 Overall, there are at least 60 lights on the site which is considered to be excessive and, as a consequence, detrimental to rural amenity. Whilst it is accepted that a commercial operation with the open display of high value products needs some lighting to facilitate security, it is considered that the number, positioning, type and intensity of illumination is not adequately sensitive to the locality bearing in mind the rural setting.

5.4.2 Members may be aware that there has been a separate investigation by the Environmental Health Section in regard to a potential Statutory Nuisance from the lights at this site. It is understood that negotiations between the site owner and DHH

have resulted in some changes to post heights, cowling of the halogen floodlights by addition of baffles and/or some re-angling of the light fittings. To date, this has reduced the light spillage to a degree acceptable to DHH (i.e. no Statutory Nuisance was occurring at the last inspection)

5.4.3 However, nuisance legislation cannot take into account the issue of wider rural amenity. Rural amenity is an issue for the planning system. The large number of halogen lights erected on the posts and buildings are not appropriate in design, style or orientation and do not cast their light downwards. This results in sky glow, light trespass outside the boundaries of the site plus glare visible from outside the site.

5.4.4 It is acknowledged that the applicant has indicated a willingness to further amend the heights of the posts, to re-angle or cowl the floodlights. However, retro-fitting of baffles as cowling gives a cluttered appearance to the lights which is unaesthetic, and the correct downward and specific angling of the light pool should have been achieved by appropriately designed luminaries of necessary wattage on posts of a more suitable height and siting with integral cowling. The lighting scheme should have been designed specifically for the sensitive rural location of the site. It is felt that to merely amend the floodlighting in situ in an ad hoc fashion as offered by the site owner does not adequately address the key issue that this is a fundamentally inappropriate and excessive lighting regime that is harmful to rural amenity. The lights are contrary to PPG23 *Planning And Pollution Control* and policies CP1, CP3, CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and Policy SQ1 of the Managing Development and the Environment DPD.

5.4.5 It is therefore considered that an Enforcement Notice should be served in respect of all the floodlights seeking their removal. The lower level lampposts and bollards are less intrusive in terms of their illumination and would not be included in any enforcement action.

Advertisement

5.5 A condition was imposed on the consent for the 2 panel sign that required the unauthorised sign to be removed within 3 weeks and that condition was being breached at the time of writing this report. However, the 3 panel advertisement at the site frontage is a breach of advertisement control and is an offence. Officers intend to prosecute if the 3 panel sign is not removed.

6. General summary

6.1 There are 5 main areas of breach –

- Landscaping (failure to fully comply with conditions)
- One unauthorised 3 panel advertisement
- Obstruction of an important HGV turning area (breach of a condition)

- Surface and foul water (failure to comply with conditions)
- External lighting (unauthorised development as well as failure to comply with conditions)

6.2 The relevant permissions are TM/10/000938/FL and (potentially) TM/11/00669/FL. I advise Enforcement Notices should be served with regard to external lighting and landscaping and Members are asked to note my intention to prosecute in respect of the advertisement if necessary and to note my intention to issue Planning Contravention Notices with regard to the Drainage and the HGV turning area with Breach of Condition Notices and/or Enforcement Notices to be served if expedient to do so in the light of further investigations.

7. Recommendation:

- 1 That all interested parties be given a formal warning of pending enforcement action;
- 2 DPTL be authorised, in consultation with the Chief Solicitor, to issue Enforcement Notices in regard to the landscaping and the external lighting, and also in respect of the drainage provision and HGV turning area if considered expedient to do so, in such terms as DPTL and the Chief Solicitor agree: and
- 3 Members note the other proposed action under my delegated powers, as set out in the report.

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