

Application Ref: 21/00477/FUL

Proposal: Proposed workshop, store and replacement hobbies classic car garage

Site: 17 Crowland Road, Eye, Peterborough, PE6 7TP
Applicant: Mr Desmond Jarvis
PSSC Window Film Ltd

Agent: Mr John Hartley
J J & J Hartley

Referred by: **Head of Planning**
Reason: Unable to get agreement with Applicant over Unilateral Undertaking and conditions

Site visit: 16.06.2021

Case officer: Mr Asif Ali
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Recommendation: **REFUSE**

1 Background

The application is for a proposed workshop, store and replacement hobbies classic car garage which was originally considered and determined by the Planning and Environmental Protection Committee on Tuesday 6 July 2021. A copy of the officer report is attached at Appendix 1.

The Resolution from the meeting was to grant planning permission:

'The application to be approved contrary to officer recommendation with conditions relating to time commencement, approved plans, hours and days of operation, materials, highways conditions, restriction on use, control of noise and personal permission. A unilateral undertaking to cease the use at 30 Crowland Road was also required.'

Since the last meeting, the planning permission has not been issued as the applicant has not agreed to enter into a Unilateral Undertaking (UU) to cease the use at 30 Crowland Road as well as the conditions which sought restrictions on the use and to ensure a personal permission. Officers are therefore unable to proceed in accordance with the resolution of the Planning and Environmental Protection Committee. For this reason, the application has been brought back to allow Committee consider the application afresh.

The Applicant has not agreed to the following conditions:

C10 *The sub-units within the development hereby approved labelled as 'Store', 'Workshop', 'Office' and 'Reception' on the approved drawing no.4690/2 shall be only used by Desmond Jarvis for his window tinting business (known as PSSC Window Films Ltd.) and for no other purposes by any other persons.*

Reason: In the interest of neighbour amenity, in accordance with Policy LP17 of the Peterborough Local Plan (2019).

C11 *The sub-unit within the development hereby approved labelled as 'hobbies (classic*

cars) on the approved drawing no.4690/2 shall be only used in conjunction with the occupation of the dwelling known as No.17 Crowland Road and shall only be used for ancillary purposes to No.17 Crowland Road.

Reason: In the interest of current and future occupier amenity of No.17 Crowland Road, in accordance with Policy LP17 of the Peterborough Local Plan (2019).

A minor change was requested to proposed Condition 3 which secured opening hours, the Agent requested that to tally the online hours for Saturday the opening hours should be amended from 08.00am-12.00noon to 08.00am-13.00pm. Officers see no major concerns with this.

For the sake of clarity, the full text of the conditions requested by Members is included at the end of this report.

2 Applicant Response

The Agent on behalf of the applicant did not wish to agree to Conditions C10 and C11 as laid out above in an email dated 21/07/2021 at 09:43.

For Condition C10 the Agent stated as follows:

*Window tinting business restricted future use – **unreasonable**.*

Supposing Mr Jarvis dies, or retires - is your stance to see the building dis-used? I suggest replacing this Condition with a 'Use Class' condition.

For Condition C11 the Agent stated as follows:

*Classic cars hobby, restricted to occupier of No.17 – **unreasonable**.*

Supposing Mr Godsland dies, retires, or moves home and the next occupant on No.17 (house) doesn't need the building.

Again, I suggest the 'Use Class' condition identical to that for Condition 9.

3 Re-assessment of case

Given that Committee made its recommendation on the original application, Officers will not carry out a full re-assessment of the case. The assessment of this addendum will be restricted to the necessity of the UU and Conditions C10 and C11.

Unilateral Undertaking

The Applicant has previously indicated that should the proposal be approved the intention would be to close the existing business site at 30 Crowland Road. Indeed the Applicant has stated that the reason for the proposal is that the existing site is too small for the Applicant's growing business.

Further, the Local Highway Authority in their comments of 17 June 2021 stated that their support for the current proposal depends on the fact that the commercial use of the existing site ceases. The LHA stated that the sites are located in proximity to one another on the same section of Crowland Road which is a classified road. This could potentially cause highway safety issues if vehicles were parked outside when vehicles were trying to access/egress from the other site, particularly given the proximity of the existing bus stop. Officers would consider that the two uses in close proximity would result in an intensification of use on a busy road and would result in an adverse level of impact on the public highway. Therefore, Officers view that the existing site use must cease to ensure that there is no adverse impact on the adjacent public highway.

The mechanism to secure the closure of the existing business site is key to ensure compliance. The absence of such a mechanism could result in the stopping of the existing business and then lawfully re-opening at a later date.

Advice was taken from the Council's Legal officers with regards to an appropriate mechanism, either a condition attached to the decision notice or a UU. It was considered that given the existing business site did not form part of the application site or the red edge, a condition could not be attached to the decision notice and that a UU would be reasonable. A template for the UU was sent to the Agent.

The UU would set a time limit as to when it commences, for example the UU can be secured so that the existing business use ceases prior to the first use of the proposed development.

However, in the absence of a UU there would be no mechanism to ensure compliance with the closure of the existing business use which would result in an intensification of commercial use in the immediate area given the location of the existing and proposed sites opposite each other as well as the adverse level of impact on a busy Crowland Road.

Therefore, the operation of both businesses in close proximity would result in an adverse intensification of commercial activity and increased vehicular traffic movements in a predominantly residential area causing harm to highway safety and the proposal would therefore not be in accordance with Policy LP13 of the Peterborough Local Plan (2019).

Condition C10

Condition C10 restricts the uses of the sub-units ('Store', 'Workshop', 'Office' and 'Reception') to Mr Jarvis' window tinting business. The condition was considered to be in line with Committee's Resolution which made recommendations for a restriction on the use and a personal permission.

Officers note that the Agent justified the proposal by referring to the personal requirements of Mr Jarvis and his business model as laid out in the Agent's email (dated 28/06/2021) which was included in the Update Report.

The Agent's email made reference to the needs of the Applicant requiring a site close to their home as well as noting the reduced highway impact given that the Applicant lives across the road and can walk to the application site. Therefore, Officers are of the view that the personal permission is appropriate given the submitted information that was submitted by the Applicant/Agent during the application stage and at the Committee meeting as the personal circumstances of the Applicant were used as a justification for the appropriateness of the site. Further, it is considered that Committee deemed the current business model of the Applicant to be acceptable for the site which provided 3no. parking spaces and 1no. disabled parking space, and provided space for the online business of the Applicant.

The Agent recommended a use restrictive condition limited to the appropriate use class. The relevant use classes for the proposed window tinting business would be a mixed use comprising of Class E(g) (window tinting) and Class B8 (store) uses as well as a small ancillary use (office). Class B1 no longer exists and has been merged with former A1, A2, A3 and other uses into Class E. The sub-division of a commercial unit for the same use would not require planning permission and potentially there is nothing to stop the mixed use business being sub-divided with multiple businesses using the proposed building.

The other matter arising from Agent's recommendation is the potential impact of a new business taking over the site and the change in business model. The Local Highway Authority considered the impact from the proposed business model and the mitigation provided by Mr Jarvis' business model with the number of staff and vehicles to be dealt with on site. A different business may have additional impact which has not been accounted for such as increased parking demand and an increased provision of staff on site providing ancillary services which would result in more vehicular movements in and out of the site. In addition, the proposed use was considered to be acceptable

on the basis that it would be a very quiet use which would not have an adverse impact on the amenity of nearby residential properties. A different business falling under a mixed Class E(g) and Class B8 use may be much noisier.

The proposed C10 condition restricts the use to Mr Jarvis' business and would ensure that the listed sub-units are used by Mr Jarvis only for his window tinting business thereby removing issues of sub-division and occupation by a different business. Should Mr Jarvis' use of the site cease then a subsequent planning application would be required from the new occupier of the unit and would provide sufficient control by the local planning authority over the appropriateness of the new use and any material considerations given the potential for any new uses to have an adverse impact on nearby residential dwellings.

Therefore, Officers are of the view that the Agent's recommended changes to C10 would be unacceptable given the impact on the adjacent public highway and parking provision, and amenity of the immediate surrounding neighbours.

Condition C11

C11 conditions the use of the 'hobbies (classic cars)' sub-unit to remain ancillary to the use of the dwelling at 17 Crowland Road. This would be the least restrictive use condition that can be applied to this sub-unit with the crucial element retaining the link to the occupation of 17 Crowland Road. Members will recall that the Applicant applied for a sub-unit which would extend the ancillary use of the classic car garage currently carried out by the occupier of 17 Crowland Road in an existing outbuilding.

Officers would point out that neither the existing outbuilding of No.17 nor the proposed sub-unit named 'hobbies (classic cars)' have or would have any lawful commercial use. These elements would remain ancillary to the residential occupation of 17 Crowland Road. Therefore, any condition that restricts the use of the 'hobbies (classic cars)' to a use class would be inappropriate as the highway and other material considerations have not been considered.

If an ancillary use condition was not applied, it would result in the potential separation of the residential property at No.17 and the proposed development to the rear. This could potentially result in an adverse impact on the amenity of the future occupiers of 17 Crowland Road.

Therefore, Officers are of the view that the Agent's recommended changes to C11 would be unacceptable given the potential impact on the adjacent public highway and parking provision, amenity of the immediate surrounding neighbours and the future occupier amenity of No.17.

Conclusion

Conditions C10 and C11 do not require the pre-agreement of the Agent and can be appended to the decision notice. It is not reasonable to refuse a planning application on the basis of a reason which could be overcome by a suitable planning condition. However, the UU is required before a decision notice can be issued, therefore the absence of the UU is the sole reason for refusal.

4 Full list of conditions

In order to comply with the Committee's previous resolution; in addition to a Unilateral Undertaking signed and submitted prior to the issuing of a decision notice, Members resolved that a number of conditions are attached. For clarity, the recommended wording of these conditions is set out in full below.

C1	The development hereby permitted shall be begun before the expiration of three years from the date of this permission. Reason: In accordance with Section 91 of the Town and Country Planning Act 1990 (as amended).
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C2	<p>The development must be carried out in accordance with the following approved plans:</p> <ul style="list-style-type: none"> - Plans, Section and Elevations (Drawing number 4690/2) - Dimensioned Site Plan (Received 02-06-2021) <p>Reason: For the avoidance of doubt and in the interests of proper planning.</p>
C3	<p>The hours of opening, operation and use shall be limited to:</p> <ul style="list-style-type: none"> - Monday to Friday 08.00hrs to 18.00hrs - Saturday 08.00hrs to 13.00hrs <p>No operation or working on Sunday or Bank Holidays.</p> <p>Reason: In the interest of neighbour amenity, in accordance with Policy LP17 of the Peterborough Local Plan (2019).</p>
C4	<p>No development shall take place unless and until details of all external materials have been submitted to and approved in writing by the Local Planning Authority. The details submitted for approval shall include the name of the manufacturer, the product type, colour (using BS4800) and reference number. The development shall not be carried out except in accordance with the approved details.</p> <p>Reason: For the Local Planning Authority to ensure a satisfactory external appearance, in accordance with Policy LP16 of the Peterborough Local Plan (2019). This is a pre-commencement condition as the materials to be used must be known before any works take place to ensure no detriment to the appearance of the site.</p>
C5	<p>All work at all times shall be carried out inside the building hereby approved with doors and windows closed.</p> <p>Reason: In the interest of neighbour amenity, in accordance with Policy LP17 of the Peterborough Local Plan (2019).</p>
C6	<p>Prior to the installation and operation of any mechanical plant (such as heating, or air conditioning associated with the development), the details of the mechanical plant shall be submitted to and approved in writing by the Local Planning Authority. The details of the mechanical plant shall include the make, model, location, sound power data and frequency spectrum of mechanical plant.</p> <p>The rating level of noise emitted from the mechanical plant at the premises should be 5dB below background noise levels. The noise levels should be determined at the nearest noise sensitive premises. The measurements and assessment should be made according to BS:4142:2014.</p> <p>The development shall not be carried out except in accordance with the approved details.</p> <p>Reason: In the interest of neighbour amenity, in accordance with Policy LP17 of the Peterborough Local Plan (2019).</p>
C7	<p>No external lighting shall be installed on the building hereby approved, unless and until details/specifications of the external lighting are submitted to and approved in writing by the Local Planning Authority.</p> <p>Reason: In the interest of neighbour amenity, in accordance with Policy LP17 of the Peterborough Local Plan (2019).</p>
C8	<p>Prior to the first use of the development hereby approved all the parking spaces as shown on drawing "Dimensioned Site Plan" (received 02-06-2021) shall be provided and shall thereafter be retained in conjunction with the Window Tinting Business hereby approved for use within the proposed development.</p> <p>Reason: In the interest of public highway safety, in accordance with Policy LP13 of the</p>

	Peterborough Local Plan (2019).
C9	<p>Prior to the commencement of the development hereby approved, details of the temporary facilities that shall be provided clear of the public highway for the parking, turning, loading and unloading of construction vehicles visiting the site during the period of construction (and demolition of the existing outbuildings) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.</p> <p>Reason: In the interests of highway safety and in accordance with Policy LP13 of the Peterborough Local Plan (2019). This is a pre-commencement condition as details will need to be approved before works commence.</p>
C10	<p>The sub-units within the development hereby approved labelled as 'Store', 'Workshop', 'Office' and 'Reception' on the approved drawing no.4690/2 shall be only used by Desmond Jarvis for a window tinting business (known as PSSC Window Films Ltd) and for no other purposes or by any other persons.</p> <p>Reason: In the interests of neighbour amenity and highway safety, in accordance with Policy LP17 of the Peterborough Local Plan (2019).</p>
C11	<p>The sub-unit within the development hereby approved labelled as 'hobbies (classic cars)' on the approved drawing no.4690/2 shall be only used in conjunction with the occupation of the dwelling known as 17 Crowland Road and shall only be used for ancillary purposes to 17 Crowland Road.</p> <p>Reason: In the interest of the current and future occupier amenity of 17 Crowland Road, in accordance with Policy LP17 of the Peterborough Local Plan (2019).</p>

5 Recommendation

The Executive Director of Place and Economy recommends that Planning Permission is **REFUSED** for the following reason:

- R 1 The absence of a Unilateral Undertaking would result in no secure mechanism to ensure that the existing window tinting business at 30 Crowland Road would cease upon the commencement of the business use proposed under this application. The application site and 30 Crowland Road are located immediately opposite each other on either side of a busy classified road. The operation of both businesses in close proximity would result in an adverse intensification of commercial activity and increased vehicular traffic movements in a predominantly residential area causing harm to highway safety. In light of the above it is considered that the proposal would be contrary to Policy LP13 of the Peterborough Local Plan (2019).

Copies to Councillors Steve Allen, Richard Brown and Nigel Simons