

**Planning and Rights of Way Panel 9<sup>th</sup> October 2018**  
**Planning Application Report of the Service Lead - Infrastructure, Planning & Development**

<b>Application address:</b> 350 Shirley Road, Southampton			
<b>Proposed development:</b> Use of part of the curtilage of 350 Shirley Road for the display and storage of motor vehicles for sale			
<b>Application number:</b>	18/01467/FUL	<b>Application type:</b>	FUL
<b>Case officer:</b>	John Fanning	<b>Public speaking time:</b>	5 minutes
<b>Last date for determination:</b>	08.11.18	<b>Ward:</b>	Millbrook
<b>Reason for Panel Referral:</b>	Request by Ward Member and 5 letters of support	<b>Ward Councillors:</b>	Cllr Taggart Cllr Furnell Cllr Galton
<b>Referred to Panel by:</b>	Cllr Taggart	<b>Reason:</b>	Complexity of the case requires special consideration
<b>Applicant:</b> Mr Paul Finnegan		<b>Agent:</b> Pegasus Group	

<b>Recommendation Summary</b>	<b>Decline to Determine</b>
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<b>Community Infrastructure Levy Liable</b>	<b>Not applicable</b>
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<b>Appendix attached</b>			
1	Development Plan Policies	2	Relevant Planning History
3	Enforcement notice	4	Enforcement appeal decision

**Recommendation in Full**

That the Council '**Declines to Determine**' this retrospective planning application in accordance with s70C of the Localism Act (2011) as the proposed development affects land to which a pre-existing enforcement notice relates.

**Background**

350 Shirley Road has a long and complicated recent planning history. This Grade II listed building was until recently in office use separated from the neighbouring car sales business. In 2017 the Council was made aware that the car sales business had extended its external sales area across the forecourt of the building, and that the building itself had been part-converted into residential use (6 studio flats). Both without the necessary planning (and listed building) permission(s). An Enforcement Notice was duly served requiring both unauthorised uses to cease and this Notice was appealed by the applicant. In dismissing the appeal the Inspector has given the applicant until 30<sup>th</sup> October to cease the use with a further month to remove the associated fixtures and fittings. At the time of writing the applicant continues to use the forecourt for car sales (albeit on a reduced area) and the building is in use as 5 studio flats. The applicant has also submitted a series of

applications for consideration including 2 on this agenda for determination; one for a 5 bedroom HMO (18/01465/FUL refers) and the other for retained car sales on the building's forecourt (albeit on a reduced area - 18/01467/FUL refers). Both applications are on this agenda and the Panel will note that if the Council does not determine these applications within the 8 week target date (set out above) then the applicant would be entitled to appeal non-determination; meaning that any prosecution after 30th October would be held up in the Courts and may need to await the conclusion of the appeal for non-determination (the unauthorised use(s) could potentially remain during this process).

## **1. The site and its context**

- 1.1 The application site is situated in a primary location on Shirley Road. While the site does not form part of the designated centre, it does lie in immediate proximity to it. The surrounding area contains a mix of commercial and residential elements.
- 1.2 The site itself is occupied by a Grade II listed building (a two-storey brick built property) with a large forecourt to the front. The neighbouring site (on the corner with Beatrice Road) is in use as car sales.

## **2. Proposal**

- 2.1 The application was submitted along with a number of other applications in an effort to regularise unauthorised development on the property. This application relates solely to the part change of use of the forecourt of the premises for the use as car sales.
- 2.2 The application has been submitted on the basis of part of the forecourt being used for car sales, following the dismissal of an appeal against the enforcement notice relating to the full frontage.

## **3. Relevant Planning Policy**

- 3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) was revised in July 2018. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

## **4. Relevant Planning History**

- 4.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.
- 4.2 The property was previously in use as offices, with the frontage of the site being in use as a car park associated with this office use of the building. In 2017 it came to

the Council's attention that a number of unauthorised changes had taken place within the site without the necessary consent.

4.3 These included a number of alterations to the forecourt designed to facilitate the extension of the adjacent car sales use onto this plot and the display of vehicles on this land. The main building had also been fitted out for residential accommodation without the necessary planning permission or listed building consent being sought. In addition, there is a number of more minor elements such as the addition of unauthorised advertisements to the site. The issue was referred to the Council's enforcement team who initially requested that the use cease before subsequently serving an enforcement notice on 28<sup>th</sup> June 2017 which required the cessation of the car sales and residential uses and removal of unauthorised signage. A copy of the enforcement notice is attached as **Appendix 3**.

4.4 The applicant appealed against this enforcement notice. The Planning Inspectorate dismissed this appeal on 30<sup>th</sup> April 2018. A copy of the appeal decision is attached as **Appendix 4**. As part of the appeal the applicant requested, and was granted, additional time to cease the use so as to ensure their business was not unduly impacted. With reference to the current proposal, they were granted a period of 6 months to cease the use of the forecourt for car sales (meaning the compliance period ends on 30<sup>th</sup> October 2018).

## **5. Consultation Responses and Notification Representations**

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners and erecting a site notice (**31.08.2018**). At the time of writing the report **7 representations** have been received from surrounding residents (2 objections and 5 in support). The following is a summary of the points raised:

### **5.2 Support**

- General improvement to appearance of site, has helped reduced antisocial behaviour

### **5.3 Objection**

- Exacerbate existing issues associated with car sales use (comings and goings, parking, delivery of vehicles)

*Officer's Response:*

*The applicant has stated that vehicles currently arrive on site individually and are not delivered by vehicle.*

## **Consultation Responses**

5.4 **Historic Environment** - There is considerable harm to the setting of the listed building because of the visual intrusiveness of the parked vehicles. The listed building is visually and physically swamped by vehicles and the impact on the street frontage is equally intrusive. The loss of the curtilage wall damages the status and historic understanding that this was a residential plot. The proposals to regularise the use of the site for the display and storage of motor vehicles within the curtilage of 350 is harmful to the setting and significance of the listed building. This harm would be considered as "less than substantial harm" in terms

of impact on the listed building. The NPPF requires that “less than substantial harm” is “*weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*”. I would therefore raise objection to application 18/01467/FUL.

- 5.5 The proposal suggests that customer parking, instead of sales parking across part of the site would off-set the harm perceived by the city council and indeed, the Planning Inspector. This is not likely to be the case since the separate curtilage is not restored as part of the scheme, and part of the frontage is still required for sales.

## **6.0 Planning Consideration Key Issues**

- 6.1 The key issue in the determination of this application is the effect of the car sales on the setting of the Grade II listed building at 350 Shirley Road (as required by s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, whilst noting that the existing business is expanding, employing staff and contributing positively to the local economy.
- 6.2 An application has been submitted retrospectively for the use of part of the forecourt of the premises for car sales. The Council has previously found this use of the land to be harmful in the context of the listed status of the building (see enforcement notice attached as **Appendix 3**). This issue was previously considered by the Inspector when he was asked to consider the acceptability of the whole forecourt for sales (again, retrospectively). The attached appeal decision concludes that:
- 6.3 *‘37. The size of the former parking area, relative to the internal office space that would have been available, indicates to me that the physical appearance of vehicles on the site would have been relatively low key. There is no convincing evidence before me that it was not so. Moreover, the ancillary parking of vehicles and related movements in association with the former primary office use would not have been a permanently blocking feature in the way that vans are currently stored on site.*
- 6.4 *38. Taking account of these factors, and on the balance of all other evidence before me, I find that the current use of the land is permanently intrusive, blocking views and appreciation of the listed building from Shirley Road. It is thereby harmful to the setting of the listed building, eroding its significance in conflict with LP Policies SDP 7 and HE3, and CS Policies 13 and 14.*
- 6.5 *39. The suggested condition to segregate small vans to one part of the site, and larger vans to the other, would not overcome this harm given that the smaller vans, as seen during my visit to the appeal site, result in the harm I have identified. The harm would be less than substantial in terms of paragraph 134 of the Framework.’*
- 6.6 The applicant has removed vehicles from part of the frontage to 350 Shirley Road and reapplied for a lesser extent of sales. In submitting the current application the applicant has argued that a reduction in the site coverage addresses this harm identified by the Inspector. With reference to the comments of the Council’s specialist heritage consultant (outlined above) it is not considered that this is the case and the other circumstances of the case are not sufficient to overcome this harm. It is further noted that in considering the appeal the Inspector explicitly considered whether potential conditions restricting the site could mitigate the harm identified caused to the setting of the listed building. On this basis it is considered

that the issue of car sales to the frontage of 350 Shirley Road has already been considered by an independent Inspector and dismissed as being harmful. The Enforcement Notice requires the removal of the vehicles and the cessation of this unauthorised use by 30<sup>th</sup> October 2018.

6.7 The Council has a duty to resolve harmful breaches of the planning regulations in an expedient fashion. On this basis, section 70C of Part III of the Town and Country Planning Act 1990 (as amended) empowers the Council to decline to determine an application where it involves 'granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control'.

6.8 Where the Council chooses to exercise this power it would mean the applicant does not have a further right to appeal, which may otherwise further delay the appropriate enforcement of the extant enforcement notice. This provision is not recommended lightly by officers as it is good practice to seek acceptable compromise where possible. However, in this case further negotiation has not been possible and the applicant has requested a decision is made on this application.

6.9 Alternative options

6.10 The Planning Panel are, of course, free to reach an alternative decision. For instance the Panel may decide to:

- Conditionally approve the car sales proposed on part of the site's frontage, noting the reduced area proposed and, consequently, the reduced impacts on the listed building setting. Officers would advise against this option for the reasons given above taking account of the advice from the heritage adviser.
- Refuse the application allowing the applicant a right of appeal. Officers would advise against this option as, whilst giving the applicant a second opportunity to persuade an Inspector that their scheme is acceptable, this could frustrate any prosecution after 30<sup>th</sup> October (as set out above) which is the date that the enforcement notice currently requires all car sales on the land to cease; or
- Defer for further negotiation. Officers would also recommend against this option as the applicant could appeal non-determination after 8<sup>th</sup> November 2018 - before the next programmed Planning Panel on 13<sup>th</sup> November – which could also frustrate any prosecution after 30<sup>th</sup> October as set out above.

## 7. Conclusion

7.1 It is recommended that the Council decline to determine the application and seek compliance with the requirements of the extant enforcement notice by 30<sup>th</sup> October 2018.

### Local Government (Access to Information) Act 1985

#### Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (c) (d) (f) 4.(f) (g) (qq) (vv) 6. (a) (b)

**JF for 09.10.18 PROW Panel**