



Assessment and appeal statement

SITE BACKGROUND

The site is located on Hampton Road in the Clifton Down Ward of Bristol. The site comprises of a four-pump vehicle filling station which benefits from a single storey sales and retail unit and hot food takeaway, car parking area and associated infrastructure such as canopy and vent stack pipe. The site is accessed from Hampton Road.

The application site is located within The Whiteladies Road Conservation Area and is adjacent to the Cotham and Redland Road Conservation Area. Kingdom Hall is to the south east of the site and is a locally listed building. There are no other Listed Buildings in the surrounding area. There are no TPO protected trees on or around the site. The surrounding area is predominantly residential.

RELEVANT HISTORY

20/04182/F Installation of vehicle charging points and associated enclosures and electrical infrastructure. GRANTED 14 January 2021

21/05029/NMA Application for a non-material amendment following grant of planning permission of 20/04182/F for the installation of vehicle charging points and associated enclosures and electrical infrastructure - now proposed relocation of existing sub-station. NMA NOT AGREED 7 October 2021

21/05586/X Application for the variation of condition No. 9 (List of approved plans and drawings) following grant of planning permission of 20/04182/F for the installation of vehicle charging points and associated enclosures and electrical infrastructure. Variation sought for Relocation of substation due to UKPN requirement. REFUSED 6 December 2021

22/02168/F Installation of vehicle charging points and associated electrical infrastructure and associated works. (Retrospective) REFUSED 5 September 2022

23/20040/REF Installation of vehicle charging points and associated electrical infrastructure and associated works. (Retrospective) DISMISSED 26 September 2023

23/00579/F Installation of vehicle charging points with associated electrical infrastructure and works (Sub-station to be installed by DNO). REFUSED 27 February 2024

24/03413/PINS Application for Planning Permission for Installation of vehicle charging points and associated infrastructure and associated works. PENDING CONSIDERATION

APPLICATION

Application for Planning Permission for Installation of vehicle charging points and associated infrastructure and associated works.

RESPONSE TO PUBLICITY

The application was advertised by neighbour letters. Expiry 9th October. No responses received.

OTHER COMMENTS

Transport Development Management (TDM) were consulted but returned no comment. As detailed in the below case history however, previous concerns raised by TDM have been overcome within a recent appeal decision, and so there is no objection to proposals on transport grounds.

STATEMENT

Please find below the LPA's statement of case for consideration. There is a complex case history and so the statement is set out as a review of previous decision making to inform assessment of the current application.

1. CASE HISTORY

There is no objection in principle to the addition of more EV charging points within the curtilage of the site, subject to any revised layout positively addressing relevant planning considerations such as detrimental impacts to highways safety, to residential living conditions, or to the design, character and heritage value of the area. For this reason, an initial layout under application 20/04182/F was granted approval. The original layout sought the addition of 3no. charging points with the substation situated at a far less prominent location to the rear of the site.

Revised proposals were submitted under application 22/02168/F, in which the electricity substation was moved from the rear of the site to the front, and an additional EV charging space added to the forecourt. This alteration triggered objections from Transport Development Management and on heritage grounds, as the structure was concluded to represent an overly prominent, uncharacteristic and incongruous addition to the established street scene, which would also introduce harmful highways and movement conditions as a result of its scale and siting adjacent to the entrance crossover, whilst largely concealing the EV parking bays behind it. The decision was appealed under reference APP/Z0116/W/23/3316534 and dismissed. In terms of transport impacts, the Inspector found that the location of the bin store could be compatible with the additional charging point if the use of the store was controlled by condition, and furthermore concluded that the presence of

the substation in this location would not give rise to dangerous conflicts arising between

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vehicles using the EV charging spaces, and other vehicles entering the site from the adopted highway. The reason for refusal on this basis was therefore not upheld. Conversely, the Inspector found that the structure in this location adjacent to the public footway, owing to its scale, form and overall appearance, would detrimentally impact on the historic characters of the Whiteladies Road and Cotham and Redland conservation areas, not just as a result of the substation, but also with regard to the associated high fencing enclosing the structure.

Concurrent with assessment of the above appeal, the applicant submitted a new application (23/00579/F) in which it was stated that the substation could be built under permitted development legislation regardless of the outcome of the appeal, and the revised layouts noted that the substation would be constructed by the distribution network operator under this legislation. The Inspector was also informed of this at appeal stage and acknowledged it as a theoretical possibility, however concluded "I have not been presented with any compelling evidence that works which could be carried out under permitted development rights by the appellant or by the DNO would also incorporate fencing of the scale, design and location proposed. Therefore, proposals carried out under permitted development rights would be less harmful to the character and appearance of the WRCA and the setting of the CRCA. Therefore, I attribute limited weight to the works that could be carried out under permitted development rights."

It was suggested to the applicant during early assessment of the most recent application (23/00579/F) that if the structure and fencing was removed from proposed plans and thus from assessment, it would then be at the applicant's own risk as to whether they decided to erect the structure in that location without confirmation that it represented permitted development, and the LPA would not in turn be offering any full planning consent to the structure in that location which could undermine the conclusions of the Inspector, now established as case law. Nevertheless, and upon internal discussion, concern was upheld regarding this approach. It was considered that if the applicant cannot demonstrate that the substation represents permitted development, and if there is no other less visually harmful location on the site where the substation could be located, then simply removing the structure from plans and giving planning permission for an additional EV parking space would prejudice the original consent and would also indirectly erode the conclusions of the Inspector in relation to the identified harm that would flow from the forward siting of the structure. On this basis it was concluded that any consent would not result in a robust decision and permission was refused.

2. CURRENT APPLICATION

Planning permission is sought directly from the Inspectorate for the same layout that was previously refused under application 23/00579/F.

The applicant underlines that the substation is omitted from proposals and cannot therefore be assessed, however with consideration to the background of this case and the fact that the development depends on this structure being present in some form on the site, that the location is clearly indicated to be to the front of the site, and that it is established case law that this would be harmful, the substation issue is a consideration. This is particularly pertinent as the lack of clarity over where this element can be situated has ramifications on the viability of the entire scheme, irrespective of whether an EV charging point can be supported.

The applicant asserts that the substation will be added under PD legislation in line with Schedule 2 Part 15, Class B of the GPDO. Part 15 refers to development to be carried out by statutory undertakers. As a matter of interpretation, it is considered that this part of the GPDO is intended to allow essential upgrades and improvements to the national grid by

statutory undertakers (e.g. DNOs), rather than to allow potentially inappropriate placement of ancillary electrical infrastructure by private operators for the benefit of private operations.

While the applicant has noted they will instruct the National Grid to place a substation in this location under permitted development powers, there is no demonstration that the applicant themselves are a licence holder to be a statutory undertaker, and no demonstration of acknowledgement or agreement from a statutory undertaker that such works are supported. There is therefore no fallback position in this regard, and the development as a whole (including the original consent) could be prejudiced by a lack of clarity over the issue of the placement of the substation.

While it is acknowledged that the substation has been removed from plans before the Inspector, the fact remains it is understood to be an essential element of the development which would cause harm in its forward location and its absence from consented proposals could prejudice a previous consent.

It is therefore the view of the Local Planning Authority that the appropriate procedure would be for the statutory undertaker to submit a lawful development certificate application containing supporting evidence that clearly demonstrates beyond reasonable doubt the proposed siting of the substation accords with all the provisions of Part 15, Class B of the Order. Subject to this issue being resolved formally and through the appropriate channels, the LPA has no other objection to the layout as proposed.

3. RECOMMENDATION

It has not been formally ascertained that the scheme is viable as the lawful siting of the substation necessary to facilitate development remains unresolved and at this time it is not concluded beyond a reasonable doubt that the suggested location represents permitted development. On this basis, the LPA recommends refusal of proposals for the following reason:

There is insufficient justification to demonstrate that the additional EV charging space within the proposed development would not prejudice the implementation of an acceptable layout of the site in design, character and heritage terms and subsequently lead to the addition of incongruous plant equipment being added adjacent to the highway causing harm to street scene to the detriment of the established street scene and Whiteladies Road and Cotham and Redland conservation areas. This runs contrary to the conclusions of an Inspector under appeal decision APP/Z0116/W/23/3316534 as well as Sections 12 and 16 of the National Planning Policy Framework, Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Local Plan Policies BCS21, BCS22 and DM31 as well as the Whiteladies Road Conservation Area Enhancement Statement (1993) and Cotham and Redland Conservation Area Character Appraisal (2011).

4. RECOMMENDED CONDITIONS

Should the Inspector be minded to grant permission, the following conditions are recommended for consideration.

Pre-commencement:

1. Noise from plant & equipment

No development/commencement of use shall take place until an assessment to show that the rating level of any plant & equipment, as part of this development, will be at least 5 dB below the background level has been submitted to and approved in writing by the Council.

The assessment must be carried out by a suitably qualified acoustic consultant/engineer and be in accordance with BS4142: 2014 Methods for rating and assessing industrial and commercial sound.

Reason: In the interests of preserving the amenity of surrounding residents in line with Policy BCS21 of the Core Strategy and Policy DM35 of the Site Allocation and Development Management Policies (2014).

Pre-Occupation/Compliance

2. Waste Management Plan

No building or use hereby permitted shall be occupied or use commenced until a waste management plan setting out how waste will be stored and collected (particularly in relation to the operation of the adjacent EV charging point) has been prepared, submitted to and approved in writing by the Local Planning Authority. The measures shall thereafter be implemented in accordance with the approved waste management plan for the lifetime of the development.

Thereafter, all refuse and recyclable materials associated with the development shall either be stored within this dedicated store/area, as shown on the approved plans, or internally within the building(s) that form part of the application site. No refuse or recycling material shall be stored or placed for collection on the adopted highway (including the footway), except on the day of collection.

Reason: To safeguard the amenity of the occupiers of adjoining premises; protect the general environment; prevent any obstruction to pedestrian movement and to ensure that there are adequate facilities for the storage and recycling of recoverable materials, in line with policies DM23 and DM32 of the Site Allocation and Development Management Policies (2014).

3. Completion and Maintenance of Vehicular Servicing facilities - Shown on approved plans

No use hereby permitted shall be commenced until the facilities for vehicular charging, circulation and manoeuvring have been completed in accordance with the approved plans. Thereafter, these areas shall be kept free of obstruction and available for these uses.

Reason: To ensure that there are adequate servicing facilities within the site in the interests of highway safety in line with Policy BCS10 of the Core Strategy and Policy DM23 of the Site Allocation and Development Management Policies (2014).

4. Noise from plant & equipment

The rating level of any noise generated by plant & equipment as part of the development shall be at least 5 dB below the background level as determined by BS4142: 2014 Methods for rating and assessing industrial and commercial sound.

Reason: In the interests of preserving the amenity of surrounding residents in line with Policy BCS21 of the Core Strategy (2011) and Policy DM35 of the Site Allocation and Development Management Policies (2014).

5. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development, it must be reported immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the Environment Agency's 'Land Contamination: risk management' guidance and BS 10175:2011 + A2:2017: Investigation of Potentially Contaminated Sites - Code of Practice. Where remediation is necessary a remediation scheme must be prepared which ensures the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors. This is in line with policy DM34 of the Site Allocation and Development Management Policies and paragraph 180 of the National Planning Policy Framework.

6. Soft Landscaping Maintenance

The soft landscaping proposals as set out on the approved site layout plans shall be carried out no later than during the first planting season following the date when the development hereby permitted is ready for commencement. All planted materials shall be maintained for five years and any plants or shrubs removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced with others of similar size and species to those originally required to be planted.

Reason: To enhance the appearance of the development and preserve the appearance of this part of the Whiteladies Road and Cotham and Redland Conservation areas in line with policies BCS21 and BCS22 of the Bristol Core Strategy and DM26 and DM31 of the Site Allocation and Development Management Policies.