

Appeal Decision

Hearing held on 23 August 2016

Site visits made on 22 and 23 August 2016

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 September 2016

Appeal Ref: APP/H0520/W/16/3145480

Land South of Fern Court, Stukeley Road, Huntingdon, PE29 6HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Lidl UK GmbH against the decision of Huntingdonshire District Council.
 - The application Ref 15/02075/FUL, dated 10 November 2015, was refused by notice dated 22 December 2015.
 - The development proposed is the creation of 7 additional car parking spaces.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The hearing was adjourned for the appellant to consider an additional planning condition suggested by the Council. I am satisfied that I can take account of the suggested condition without prejudice to any party.
3. An officer of the Local Highway Authority (LHA) appeared at the hearing. The LHA had made no written representations in respect of the planning application or appeal, but the officer's oral evidence simply articulated relevant parts of the Council's case. Under Rule 9 of the *Town and Country Planning (Hearings Procedure) (England) Rules 2000*, any statutory party is entitled to appear at a hearing. Again, no party was prejudiced by the participation of the LHA.

Main Issue

4. The proposed parking spaces would serve an existing supermarket. The Council refused the proposal for two reasons – but it was agreed at the hearing that the parking spaces would not undermine planning policies that seek to encourage the use of sustainable modes of transport to any significant degree. At the hearing, the Council also modified its objection relating to the character and appearance of the area to focus more specifically on the effects of the proposed development on the protected tree.
 5. I thus consider that there is one main issue: whether the proposed parking spaces would represent sustainable development, with regard to the continued well-being and amenity value of a protected tree.
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Planning Policy

6. The development plan includes the *Huntingdonshire Local Plan Part One* ("the Local Plan") and the *Huntingdonshire Local Development Framework Core Strategy*. I have been referred to relevant policies in the Local Plan.
7. The parties have also referred to policies in the *Draft Huntingdonshire Local Plan to 2036: Stage 3* (2013) ("the Draft Plan"). The plan is in relatively early stages of preparation and I am not aware of any outstanding objections to the relevant policies. However, I may attach moderate weight to such policies insofar as they accord with the National Planning Policy Framework ("the Framework"), and I will consider this matter further in my reasoning below.
8. The Framework sets out national planning policy and a presumption in favour of sustainable development. The Framework was amended by a Written Ministerial Statement of March 2015 ("the WMS").

Reasons

9. The appeal concerns an area of soft landscaping in the centre of the car-park of a recently constructed supermarket. There is a mature walnut tree in the centre of this area, and I saw that it is substantial in size and an attractive specimen. It makes a positive contribution to the visual amenity of the area, as recognised by its protection by way of a Tree Preservation Order (TPO).
10. The appellant has submitted an Arboricultural Impact Assessment (AIA) dated 22 August 2014, which evaluated the tree as Category A – being of high quality and value. The AIA estimated that the tree would have a life expectancy of 40+ years. The appellant's Arboricultural Appeal Statement (AAS) dated January 2016 also rates the tree as Category A.

Policy Context

11. Both parties focussed their representations on whether the proposed parking spaces are 'necessary'. The Council argues that the proposed development is 'unnecessary' and would harm the protected tree; the appellant suggests that necessity is a matter for the developer and the works would comply with *British Standards 5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations* ("the BS"). Before I consider that latter point, I shall assess planning policy guidance in relation to car parking.
12. The WMS states that new off-street parking spaces should not be arbitrarily restricted. The Framework has been amended to state that local standards should only be imposed 'where there is a clear and compelling justification that [this] is necessary to manage [the] local road network'.
13. However, neither the WMS nor the Framework suggests that the number of parking spaces on any particular *site* cannot be restricted or should only be determined by the needs of the market. The Framework states that transport policies have an important role to play in facilitating sustainable development – and in contributing to wider sustainability objectives. The Framework also seeks to ensure that development secures a high standard of design and will add to the overall quality of the area for its lifetime.

BS5837: 2012

14. The proposed car parking spaces would be laid out within the root protection area (RPA) of the walnut tree, and they would cover around 15.8% of the RPA. It is proposed that the spaces would be formed using a 'no-dig' and 'no-compaction' system to minimise the risk of damage from the hardstanding – and cars parked on it – to the roots of the tree.
15. BS Paragraph 5.3.1 of the BS states that "the default position should be that structures...are located outside of RPAs of trees to be retained...where there is an *overriding justification* for construction within the RPA, technical solutions might be available to prevent damage to the tree" [my emphasis]. Paragraph 7.1.1 states that "construction in the RPA should accord to the principle that the tree and soil structure take priority, and the most reliable way is to preserve the RPA completely undisturbed."
16. As the appellant suggests, paragraph 7.4 of the BS gives design guidance for the installation of hardsurfacing within an RPA. The proposed 'no-dig' system could be secured by condition and it would accord with advice set out in paragraphs 7.4.2.1 and 7.4.2.2; the parking spaces would cover less than the 20% of the RPA as recommended in paragraph 7.4.2.3. However, paragraph 7.4.1 states that this specialist design advice should be sought only "where permanent hard surfacing within the RPA is considered unavoidable".
17. Again, neither the WMS nor the Framework supersedes the advice in the BS – and seeking compliance with the BS, in my view, would not represent an "arbitrary" restriction of the kind that the WMS seeks to avoid. I find that the location of the proposed parking spaces could clearly affect the continued well-being of the protected tree, such that it is essential to consider whether there is an 'overriding justification' for the development.

The Justification for the Proposed Parking Spaces

18. There are currently 97 parking spaces at the appeal supermarket, a number which exceeds the requirement identified in the Transport Assessment (TA) submitted with the 2014 planning application¹. However, the TA may be out of date, and the appellant has submitted a *Report into Car Park Usage* ("the Report"), which surveyed car park occupancy over the weekend of 23 and 24 January 2016.
19. The Report shows that on Sunday 24 January, the car-park was over capacity for a significant amount of the day. However, parking levels were generally within capacity on the Saturday, and indeed they only approached capacity during one fifteen minute period on that day, when 94 cars were parked.
20. The survey was conducted some eight weeks² after the store opened to avoid the 'novelty value' and the Christmas period. However, I am not persuaded that eight weeks would be sufficient time for trading patterns to become established. I am also concerned that the survey was carried out over a very short period and there is a lack of comparative data over a longer timeframe.

¹ Council reference: 14/01484/FUL

² The Report itself gives a figure of 6 weeks, but both the Council's statement and the appellant's oral evidence at the hearing gave the 8 week figure.

At both of my site visits, admittedly snapshots in time, I observed available parking spaces. In my view, the level of demand over 23 and 24 January does not amount to evidence of a shortage of parking spaces.

21. I am conscious of the deadlines that have to be adhered to for the production and supply of evidence in respect of planning appeals. In this case this may have hindered the collection of more thoroughgoing data. However, this does not alter my findings in respect of the Report's conclusions. Thus the appellant has not conclusively demonstrated that there are serious risks of harm from any overspill parking in the surrounding area, or from traffic backing up onto Stukeley Road, or from increased emissions as a result of drivers staying on the road while waiting for parking spaces to become available. Furthermore, I am not persuaded that *general* usage of discount supermarkets on the national scale has increased to the extent as to weigh heavily in favour of this particular development. I also note that local shopping and parking patterns may change, given that another discount retailer is expected to open nearby this year.
22. I accept that the additional car parking spaces would not necessarily increase trip generation to the site, which is more influenced by the floorspace of the supermarket. Even so, I find that there is no overriding justification for the proposed development, such that the provision of parking spaces within the RPA of the protected tree could be considered unavoidable.

Long-term Issues

23. The finding above is sufficient for me to dismiss the appeal, but an additional matter was raised at the hearing. The AAS anticipates that some further pruning of the protected tree may be required; but it does not consider that leaves and the hard fruits from the protected walnut tree would be liable to fall on both the proposed surface and cars parked there.
24. In my view, there is a realistic prospect that fruit and leaf fall could give rise to a maintenance burden for, if not insurance claims against, the store operator and therefore further pressure for pruning or other tree works. Whilst fruit and leaf fall are inherent risks associated with trees, I am not persuaded that addressing any effects of these is simply a commercial matter, because the Council could find it hard to resist an application for tree works required on health and safety grounds – and yet pruning could further threaten the well-being of the tree and its contribution to the character, appearance and visual amenity of the area. This point adds to my concern about the proposed development.

Conclusion

25. I conclude that the proposed development would infringe upon the RPA of a high quality protected tree, to the likely detriment of its continued well-being, and without any overriding justification. Consequently, the appeal scheme would conflict with Local Plan Policy En18 which expects development to protect important site features including trees; and the advice of *BS5837:2012*.
26. The proposed development would also conflict with Draft Plan Policies LP13, LP17, LP18, LP23 and LP29, insofar as they expect development to be sited sensitively and respect distinctive qualities of the surrounding landscape; to minimise any adverse effects of car parking on the townscape and landscape;

and to avoid giving rise to a threat of the continued well-being of a protected tree. Those policy criteria are consistent with the Framework. Indeed as the significant environmental harm caused by the proposed development would demonstrably outweigh any modest social or economic benefits associated with an increase of 7 parking spaces, it would thus not represent sustainable development. Consequently, the appeal scheme would also conflict with the Framework.

27. Due to the limited amount of additional hard surfacing proposed I detect no conflict with Policy En25 of the Local Plan as it seeks to ensure that developments make adequate provision for landscaping. However, compliance with this policy does not outweigh the proposed development's other conflicts with the development plan and the Framework.
28. For the reasons given above and with regard to all other matters raised, I conclude that the appeal should be dismissed.

G J Fort

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Miles Drew	Bilfinger GVA
Gemma Hiden	Bilfinger GVA
Brian Wallis	RPS Group

FOR THE LOCAL PLANNING AUTHORITY

James Lloyd	Huntingdonshire District Council
Lou Mason-Walsh	Cambridgeshire County Council
Richard Jones	Huntingdonshire District Council
Chris Thompson	Huntingdonshire District Council

DOCUMENT submitted at the Hearing

1) Local Planning Authority's suggested wording for a condition requiring a Construction Specification and Method Statement