The Planning Inspectorate

Appeal Decision

Site visit made on 18 October 2016

by Stephen Hawkins MA MRTPI

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

Decision date: 9th November 2016

Appeal Ref: APP/U3935/W/16/3156260
Market Street, Swindon SN1 1RZ

- 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 CIP (Leonard Street) Limited against the decision of Swindon Borough Council.
- The application Ref S/15/2017/RA, dated 3 December 2015, was refused by notice dated 16 June 2016.
- The development proposed is described as demolition of existing tented market and erection of new building housing 5 no A3 units over two storeys with associated hard and soft external landscaping.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing tented market and erection of a two storey building comprising four Class A3 (food and drink) units, one Class A1 (shop) unit and associated works at Market Street, Swindon SN1 1RZ in accordance with the terms of the application, Ref S/15/2017/RA, dated 3 December 2015, subject to the conditions in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by CIP (Leonard Street) Limited against Swindon Borough Council. This application is the subject of a separate decision.

Procedural Matter

3. The description of development in the banner heading has been taken from the planning application form. However in part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. This matches the description on the Council's decision notice. As the Council clearly determined the application on that basis, I have used the amended description in my formal decision.

Main Issues

4. These are:

    - The effect of the proposal on the vitality and viability of Swindon town centre.
    - The effect of the proposal on the character and appearance of the area.

Reasons

5. The appeal site is largely occupied by a striking, tent-like structure erected in the mid-1990s, used as a market hall. Occupying the site of the town's Victorian market, demolished in the mid-1970s, the market hall accommodates a variety of small, primarily retail units. The market hall is in a prominent 'island' location, on the corner of a major road, between two pedestrian thoroughfares leading towards the Wharf Green urban square and the Brunel shopping centre. The buildings on the opposite side of Market Street are mainly used for retail purposes, whilst on the other side of Commercial Road the buildings are in a mix of retail and commercial uses.

Vitality and viability

6. Section 7 of the Swindon Central Area Action Plan (AP) adopted in 2009, recognised the market hall as a redevelopment opportunity, as it failed to deliver a retail environment that met the expectations of the shopper. The market hall generally lacks an active external frontage and it has a largely inward-looking arrangement. When I visited the market hall, it had a very limited retail offer, with the majority of units being either entirely vacant or closed. The available evidence suggests that there has been a steady reduction in the number of retail units operating in the market. The hall has poor internal lighting and circulation areas. The above has all reduced the attractiveness of the market hall to visitors, a point perhaps illustrated by the negligible pedestrian footfall I observed during my visit. According to the evidence supplied, this has led to the position where the operator of the market says they are not covering their costs.

7. I fully acknowledge the historic background to the town's market, together with the concerns expressed at application stage by businesses occupying units in the hall, a large number of customers and other interested parties, regarding the loss of the market facility and the adverse impact on local small businesses. The market is clearly a much valued facility and I have therefore considered these matters very carefully. Nevertheless, the retail use of the market hall has clearly declined and is now very limited in scale. The evidence supplied also suggests that a new, alternative market facility is available in the Brunel centre charging a similar level of rent to the market hall. Further, the appellant has also referred me to a recent survey, which identifies a considerable number of vacant units across the town centre. None of this evidence has been challenged by the Council.

8. The above all leads me to conclude that the market hall does not currently make a significant contribution to the vitality and viability of the town centre and, moreover, its future operation is unlikely to be sustainable. Secondly, it leads to the conclusion that the small number of businesses currently occupying units in the market hall that would be displaced, together with developing small businesses that would otherwise have occupied a unit there, are likely to be accommodated in premises elsewhere in the town centre, such as the Brunel centre market or in vacant shop units.

9. The use of the majority of the units in the proposed building would be as restaurants within Use Class A3, with one retail unit in Use Class A1. This would create a more diversified mix of uses in the locality, having regard to the mainly retail focus of the existing units along Market Street and around Wharf Green. Moreover, the extensively glazed elevations and associated external

seating areas would create active street frontages alongside the pedestrian routes to Wharf Green and the Brunel centre. This activity would substantially increase the vibrancy of the area throughout the day and into the evening and it would play a significant part in increasing the attractiveness of the town centre as a shopping and leisure destination.

10. I note that section 7 of the AP refers to the market hall as being within the secondary frontage. This might have been the position in 2009 and when the previous planning applications for development similar to the appeal scheme were refused by the Council in 2007 and 2008. However, the market hall is outside of the town centre's secondary retail frontage shown on the Policies Map accompanying the Swindon Borough Local Plan 2026 (LP), adopted in 2015. Therefore, whilst section 7 of the AP makes reference to small–scale retail outlets supplemented by restaurants and cafes as forming the basis of development of the market hall, it does not appear to reflect the current LP and I shall afford that text limited weight.

11. I have also been referred to the Town Centre Master Plan, adopted by the Council for development control purposes in April 2013, in which the market is identified as being removed and redeveloped for mixed uses with active frontages, including restaurants. This document cannot be afforded the same status as the Development Plan, nonetheless it post-dates the AP and is a material consideration which I shall afford some weight.

12. Therefore, and for all the above reasons, I find that the proposal would not detract from the vitality and viability of the town centre. Consequently, the proposal would accord with LP Policy EC3, as it would not fail to protect the shopping function of the town centre and it would not reduce the percentage of secondary frontage in Class A1 retail use in the town centre to below 60%. Further, the proposal would accord with AP Policy CAAP13, which has a similar percentage restriction on secondary frontage in non-retail uses and it would provide active frontages at ground floor level at all points of the development that front onto the main streets and spaces.

13. I acknowledge that the National Planning Policy Framework (the Framework) at paragraph 23, bullet point five, supports the retention and enhancement of existing markets and ensuring that markets remain attractive and competitive. However, this has to be read in its context and should not be taken in isolation. Other requirements of paragraph 23 are the promotion of competitive town centres that provide customer choice and a diverse retail offer reflecting town centre individuality and positive planning for the future of town centres to encourage economic activity. Thus paragraph 23 should not be read as providing a measure of support for a market where the available evidence indicates that it is no longer viable. The overarching objective of paragraph 23 is the promotion of competitive town centre environments to ensure their vitality. The proposal would be entirely in line with these objectives. Overall therefore, for the reasons I have identified above I consider that the proposal would be consistent with paragraph 23 and the rest of Section 2 of the Framework in terms of ensuring the vitality of the town centre.

Character and appearance

14. The appeal site is surrounded by a mix of development of different ages, styles, materials and scales, ranging from modern offices and a multi-storey car park, the modern town centre shops around Wharf Green and the more domestic

scale and traditional appearance of the terraced buildings fronting Market Street and Commercial Road. Although the design of the existing tented structure does give the locality some sense of identity, it nonetheless has a somewhat tired and run-down appearance. The general absence of activity on its frontages coupled with the presence of some solid roller shutters on the Market Street elevation also contributes to the sense of urban decline.

15. The proposed building would be of a crisp, contemporary design taking the form of a pavilion, with full height glazing wrapping around its elevations. It would have a rounded form following the curves of the site. It would occupy the footprint of the existing structure, thus making the most efficient use of the available land. The wide roof overhang would be supported with columns along the Market Street frontage, thus providing a sense of a vertical emphasis along that elevation. The low roof profile minimises the overall height of the proposed building, giving it a human scale and also responding positively to the domestic scale of development on the opposite site of Market Street.

16. Part of the west elevation, which would be more visible at the confluence of nearby vehicular and pedestrian routes, would be clad in terracotta tiles with a raised parapet detail. In this respect, whilst clearly of modern appearance the proposed building would reference the appeal site's mercantile past as well as the industrial heritage of the town. This would also provide a strong visual focus to the proposed building in public views from the adjacent thoroughfares. Consequently, the design of the proposed building would not lack for visual interest or distinctiveness, it would provide active frontages and it would create an appropriate 'landmark' structure in this prominent location which reflects local heritage.

17. I accept that the east elevation and seating areas are likely to be more in shadow on sunny days in the afternoons and evenings. Even so, this is unlikely to significantly deter customers from either visiting the units or using the outdoor seating areas. Furthermore, whilst the Market Street entrances might be screened from some approaches, they would have a logical arrangement addressing the street frontage and would thus be legible to users. In relation to these matters I find that they do not detract from the high quality of the design of the proposed building. Moreover, the visual interest provided by the elevations of the proposed building and the space around it would relate well to Wharf Green, by creating a more attractive urban environment along the pedestrian approaches to the urban square and also with the significantly increased levels of frontage activity.

18. As a result of all of the above, I find that the proposal would achieve a high standard of urban design which would be both sympathetic to and improve the surrounding townscape and it would not cause unacceptable harm to the character and appearance of the area. Therefore, the proposal would accord with LP Policy DE1, because it would have a high standard of design which addresses the objectives of sustainable development when assessed against the design principles of context and character, in respect of existing building characteristics, acknowledged features of importance and existing site conditions and when assessed against the design principles of the layout, form and function of the development, in respect of accessibility, connectivity, permeability, legibility, siting, orientation, scale, massing, materials and detailing.

19. Further, the proposal would accord with AP Policy CAAP 1, because it would have a high quality design which, amongst other matters, incorporates active frontages, ensures entrances are emphasised and designed to complement the public realm, respects and satisfactorily addresses order and unity, expression, integrity, siting, massing, scale, proportion, rhythm, materials and landscaping and respects the context of the site and the character of the part of Swindon in which it is located. Consequently, the proposal would also accord with the Framework core principle of ensuring good design at paragraph 17 and the more detailed advice on good design at Section 7.

Other matters

20. Interested parties have also commented that there is no need for more restaurants in the town and that there is a covenant on the appeal site regarding its use as a market. However, these are not planning matters and I am therefore unable to take them into account.

Conditions

21. In addition to the standard commencement condition, I have imposed a condition specifying the approved plans in the interest of certainty. This condition varies slightly from that suggested by the Council, as I have removed the references to superfluous documents.

22. To ensure that the development has a harmonious appearance with its surroundings, I have imposed a condition requiring the prior approval of the external facing materials. In order to ensure a visually satisfactory setting for the development, I have imposed a condition requiring the submission and implementation of a scheme of hard and soft landscaping. I have also imposed a condition requiring the provision and retention of cycle parking. This is in order to promote alternative travel modes to the private car.

23. In the case of both materials and landscaping, pre-commencement conditions were suggested by the Council. However, I have modified both conditions to require compliance prior to erection of the new building. This is because, having regard to the Planning Practice Guidance (PPG) section 'Use of Planning Conditions' at paragraph 007, I am not satisfied that these matters are so fundamental to the development that it would otherwise have been necessary to refuse permission. The Council have not provided any justification as to why these conditions should be complied with prior to the commencement of the development.

Conclusion

24. The proposal would accord with the Development Plan and the Framework.

25. For the reasons given above I conclude that the appeal should be allowed.

Stephen Hawkins

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1506-100, 1506-101 Rev B, 1506-102 Rev B, 1506-103 Rev B, 1506-104 Rev A & 1506-105 Rev A.

3) With the exception of the demolition of the existing building, no development shall take place on site until samples of all external facing materials, including glazing type and openings, have been submitted to and approved by the Local Planning Authority in writing. The relevant works shall be carried out in accordance with the approved sample details.

4) With the exception of the demolition of the existing building, no development shall commence on site until a scheme of hard and soft landscaping, to include a planting schedule and a timetable of implementation, has been submitted to and approved by the Local Planning Authority in writing. The approved scheme shall be implemented in accordance with the approved timetable. Any tree or shrub planted in accordance with the scheme which is removed, dies or becomes diseased within a period of five years from first being planted, shall be replaced by one of a similar size and the same species.

5) None of the units shall be occupied until space has been laid out within the site in accordance with drawing nos 1506-101 Rev B and 1506-105 Rev A for at least eight bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.