
Appeal Decision

Site visit made on 31 October 2016

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 22nd November 2016

Appeal Ref: APP/D1835/W/16/3156342

The Goodrest, Barker Street, Worcester, Worcestershire WR3 8NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by NewRiver Retail Property Unit Trust, no 4 against the decision of Worcester City Council.
 - The application Ref P16H0089, dated 16 February 2016, was refused by notice dated 26 May 2016.
 - The application sought planning permission for erection of Class A1 convenience store including ATM with dedicated external servicing, refuse and plant area, associated car parking, access arrangements and landscaping without complying with a condition attached to planning permission Ref P14H0594, dated 14 January 2016.
 - The condition in dispute is No 6 which states that: "No deliveries of goods to be sold and stored on the premises shall be made or despatched from the premises outside the hours of 0700 to 2200 Mondays to Saturdays and 0800 to 1600 hours on Sundays. Within these time periods no deliveries shall be made or despatched from the premises between the hours of 0830 and 0915 and 1500 and 1600 on any day on which children are attending nearby schools."
 - The reason given for the condition is: "To ensure that the use of the service yard does not adversely impact the amenities of neighbouring residents and to avoid conflict with users of schools in close proximity to the site in the interests of pedestrian safety in accordance with Policy BE1 of the City of Worcester Local Plan 2004 and the aims and interests that the National Planning Policy seeks to protect and promote with regard to amenity."
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Decision

1. The appeal is allowed and planning permission is granted for erection of Class A1 convenience store including ATM with dedicated external servicing, refuse and plant area, associated car parking, access arrangements and landscaping at The Goodrest, Barker Street, Worcester, Worcestershire WR3 8NP in accordance with the application Ref P14H0594 without complying with Condition 6 of that permission but subject to the other conditions imposed therein, so far as they are still subsisting and capable of taking effect, and subject to the following condition:

No deliveries of goods to be sold and stored on the premises shall be made or despatched from the premises outside the hours of 0700 to 2200 Mondays to Saturdays and 0800 to 1600 hours on Sundays.

Procedural Matters

2. The covering letter submitted with application Ref P16H0089 refers to Conditions 4 and 6 of planning permission Ref P14H0594. However, it is clear from the documentation that it is Condition 6 which is disputed. The Council dealt with the application in that way and I will deal with the appeal in the same way.
3. The Council adopted the Developer Contributions Supplementary Planning Document (SPD) with effect from 20th October 2016. The Council has confirmed this does not affect the appeal proposal.
4. The first part of the decision notice in respect of application Ref P16H0089 refers to "*The decision to grant planning permission....*" However, the decision notice also says "*In the opinion of the Local Planning Authority, the proposal would be premature in advance of the opening and operation of the store and the lack of sufficient monitoring to provide evidence to demonstrate that the terms of the condition would have an adverse impact on the viability and successful operation of the store.*" It is clear from the Minutes of the Planning Committee of 26 May 2016 that the Council intended to refuse permission to vary the disputed condition and the appeal has been submitted against that refusal. I have therefore considered the appeal on the basis that permission was refused.
5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this appeal the development plan is the South Worcestershire Development Plan 2016 (SWDP). Policy BE1 of the City of Worcester Local Plan 2004 is replaced by Policy SWDP 21 which seeks to protect the amenity of occupiers of neighbouring properties. Policy SWDP 9 requires that evening and night time developments do not result in an unacceptable impact on neighbouring uses by reason of disturbance, traffic or safety.

Application for costs

6. An application for costs was made by NewRiver Retail Property Unit Trust, no 4 against Worcester City Council. This application is the subject of a separate Decision.

Background and Main Issues

7. Paragraph 206 of the National Planning Policy Framework (The Framework) says that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) says that decision makers must only consider the disputed condition when dealing with proposals for developing land without complying with a condition subject to which planning permission has been granted.
8. Planning permission was granted in January 2016 for a retail store subject to a number of conditions Ref P14H0594. The store has not yet been constructed. The proposal seeks to remove the restrictions on delivery vehicles between the hours of 0830 and 0915 and 1500 and 1600 on any day on which children are attending nearby schools (for ease of reading I will refer to these hours as the

school term restrictions). The restrictions imposed by the remainder of Condition 6 preventing the delivery or despatch of goods to and from the premises outside the hours of 0700 to 2000 Mondays to Saturdays and 0800 to 1600 on Sundays and Bank Holidays are not disputed by the appellant.

9. Taking into account the above I consider the main issues for this appeal are whether the school term restrictions:
- are necessary in the interests of highway safety taking particular account of users of schools and the living conditions of the occupiers of nearby dwellings; and
 - are precise and reasonable in all other respects.

Reasons

Are the school term restrictions necessary?

10. The Goodrest public house, its associated outdoor space and beer garden and its extensive car park, occupies an open prominent position at the junction of Barker Street and Gillam Street. The appeal site is part of the car park and the public house would continue trading on the remainder of the site.
11. The surrounding streets are mainly in residential use and in most cases have footpaths on both sides. The principle of delivery vehicles using the surrounding highway network to service the retail unit has already been established. The appellant says that based on the requirements of the intended operator of the store there would be two deliveries by 10m rigid vehicle and one by a transit van on an average day. These would be spread out through the permitted hours.
12. The numbers and types of delivery vehicles will vary according to goods stocked and customer activity and the store operator may only have limited control over particular vehicle movements. Accordingly they cannot be predicted with precision and are likely to vary over time. The approved layout supplemented by Plan Ref 14015-RF20-TR002 Rev F shows that service vehicles can enter the site from Barker Street and turn and exit in forward gear onto Gillam Street.
13. I acknowledge the concerns of the Council to ensure that children in particular can safely access educational premises. No specific ones are mentioned on the decision notice but during my site visit I observed Bishop Perowne Craft College and St Barnabas C of E Primary School on Merrimans Hill Road and Green Lane respectively and there are a number of other educational establishments in the wider area. Third parties raise concern about the lack of drop off areas for pupils and the congestion and inconsiderate parking outside schools during school drop off and collection times.
14. Merrimans Hill Road and Green Lane both have a junction with Gillam Street and both have a number of other roads intersecting with them so there are a variety of possible routes that might be taken by those attending the College and School. I have seen no evidence of where children live or which route they use and in any event these are likely to vary overtime.
15. Worcestershire County Council as Highway Authority raises no objections on highway safety grounds to the proposal. On the basis of the evidence I see no

reason to disagree with the Highway Authority. I acknowledge that there may be some deliveries to the appeal site during the school term restrictions whilst children are going to and from school. However, in the context of the existing traffic on the nearby streets and as the vehicles can turn within the site, I see no reason to suppose that there would be significantly more risk to the safety of users of the highway during these times as a result of vehicle movements to and from the site.

16. Accordingly I conclude the school term restrictions are not necessary in the interests of highway safety or to comply with Policies SWDP 9 and SWDP 10 which require convenient and safe travel modes particularly by cycle and walking or those principles of the Framework that require safe and convenient access for all. Moreover on a practical level it seems likely to me that vehicles arriving at the site may well be subject to delays beyond their control and imprecise in their arrival times and that the school term restrictions might therefore add to on street parking in the area.
17. There are residential properties on Gillam Street facing towards one of the access points. Across Barker Street from the other access are the side walls and gardens of other houses. There is also living accommodation in the Goodrest public house. Disturbance to residents as a result of the lifting of the school term restrictions could arise from delivery vehicles arriving, parking and departing and/or from loading/unloading/movement of trolleys.
18. The submitted noise assessment indicates that the additional noise impact above background levels arising during the school term restrictions is low. Moreover, deliveries to and from the appeal site would remain restricted during quiet times of the evening and night when most residents would expect peaceful enjoyment of their houses. In addition, Condition 11 of the planning permission requires the approval and implementation of a service yard management plan to mitigate the effects of loading and unloading activities. For these reasons I conclude that the school term restrictions are not necessary in the interests of the living conditions of the occupiers of nearby dwellings or to comply with Policies SWDP 9 and SWDP 21 or those principles of the Framework that seek to ensure a good standard of amenity for occupiers of land and buildings.

Are the school term restrictions precise and reasonable in all other respects?

19. The disputed condition does not refer to the term times of any specific educational establishment(s) and in that respect it is not sufficiently precise. In my judgement the restriction to “...any day on which children are attending nearby schools” is not reasonable as it would require the store operator and suppliers to have knowledge of the operational arrangements, which are likely to change over time, of a number of unspecified educational establishments. I therefore conclude the school term restrictions are neither precise nor reasonable.

Other Considerations

20. The Council considers the lifting of the term time restrictions is premature in advance of the opening and operation of the store and the lack of sufficient monitoring to provide evidence that the terms of the condition would have an adverse impact on the viability and successful operation of the store. However, in my judgement it would be very difficult to disentangle the effects of the

school term restrictions on the overall viability of the store. I have seen no evidence of a requirement in the development plan to demonstrate viability in this context. The way a store operates is liable to change over time and therefore a period of monitoring is unlikely in my judgement to yield definite evidence of future traffic movements to the appeal site. Accordingly I give the matter of prematurity little weight in my conclusion.

21. Policy SWDP 4 seeks financial contributions from development towards transport infrastructure either through developer contributions or via a Community Infrastructure Charging Schedule. A signed sealed agreement dated 21 October 2016 under s106 of the Town and Country Planning Act 1990 was submitted during the course of the appeal. This provides for a financial contribution to real time information at bus stops on the nearby Astwood Road. I consider this contribution to meet the terms of the Community Infrastructure Levy Regulations 2010 and the PPG and conclude it is necessary and reasonable in order to ensure the availability of satisfactory means of transport other than the private vehicle.

Conditions

22. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

23. For the reasons set out above and taking into account all other relevant matters raised I conclude that the appeal should succeed. I have therefore granted a new permission in the terms set out above.

SDHarley

INSPECTOR