

## Appeal Decision

Hearing held on 2 November 2016

Site visit made on 2 November 2016

**by Amanda Blicq BSc (Hons) MA CMLI**

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

**Decision date: 08 December 2016**

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**Appeal Ref: APP/L2630/W/16/3150673**

**Thatcher's Needle, 33 Park Road, Diss, Norfolk IP24 4AS**

- 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 Marston's Estates Ltd against the decision of South Norfolk District Council.
  - The application Ref 2015/1428, dated 24 June 2015, was refused by notice dated 4 March 2016.
  - The development proposed is erection of 4 no non-food retails units (Use Class A1) comprising total 3948sqm with access from Park Road.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing an application for costs was made by Marston's Estates Ltd against South Norfolk District Council. This application is the subject of a separate Decision.

### Procedural Matters

3. I have used the description of the development given in the Council's decision notice in the heading above, as it more accurately describes the proposal before me.
  4. I have included a consideration of the need for a retail assessment and the effect of the development on the vitality and viability of Diss town centre, as one of my main issues. This was raised as a concern by interested parties during the original application and the appeal. After reviewing the evidence I invited the appellant to respond to points raised in the Diss Heritage Triangle Trust's (the Trust's) representation.
  5. Following the hearing I made an accompanied site visit; at the request of the Town Council, I also viewed the appeal site, on an unaccompanied basis, from the car park of the Town Council offices. It was agreed between the main parties that a representative from the Town Council would lead the way to the car park.
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6. In order to maintain consistency with the evidence, I have referred to the site trees using the references in the arboriculturalist's report<sup>1</sup> that is T6, T7 and T10, rather than the references given in the Tree Preservation Order<sup>2</sup> (TPO).

### **Main Issues**

7. The main issues are:

- the effect of the development on the character and appearance of the area, with particular regard to the setting of the Diss Conservation Area (CA);
- the effect of the development on the adjacent trees, which are subject to a TPO; and
- whether local and national policies require the undertaking of a retail assessment, in relation to the effect of the development on the vitality and viability of Diss town centre.

### **Reasons**

#### *Character and appearance*

8. The appeal site is a large area of rough ground situated on the southern edge of Diss town centre. It is bounded to the west by a mid C20 industrial building, to the south by an electricity sub-station, to the east by a Morrison's superstore and to the north by a large bus turning area and a recently built public house, the Thatcher's Needle. The site is separated from a large open space (Park Field) and The Mere, by Park Road. This is a relatively narrow two-lane road and was busy in the morning peak period when I visited the site before the hearing. The development would be accessed from Park Road from the existing access points to the Thatcher's Needle car park. The public house itself is a one and two-storey structure built in a vernacular style, and on a domestic scale, with tiled hipped roofs, pastel coloured render, timber porch canopy and small door and window openings.
9. I noted on my visit that although there are mature trees lining Park Road, which provide some screening of the appeal site both from the road and Park Field, they are irregularly spaced and do not provide a complete visual barrier. I also noted that when standing in the middle of Park Field, there are views across the appeal site to trees on the skyline beyond. These views maintain visual links between the town and the countryside to the south, and whilst I appreciate that the sub-station falls within that view, the pylons do not obstruct the view and its associated buildings are insufficiently high to form a significant barrier.
10. Park Road, running along the southern edge of Park Field, also forms the southern edge of the CA. The CA Appraisal<sup>3</sup> (CAA) notes that on the southern side of Park Road, there has been much activity with the removal of major industrial units and states that redevelopment here could be a great opportunity to visually link both sides of the road. The CAA shows that until 1939 the land to the immediate south of Park Field, running down to the River Waveney, was undeveloped.

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<sup>1</sup> Aspect Arboriculture, 9094.AS.001, August 2016

<sup>2</sup> South Norfolk District Council, Tree Preservation Order 1992 No. 2

<sup>3</sup> South Norfolk Council, Diss Conservation Area Character Appraisal and Management Plan, September 2012

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11. I also note from the evidence that almost all of the buildings backing onto Park Field or The Mere are either listed buildings or of townscape significance<sup>4</sup>. Although it is largely the rear of these buildings that are seen from Park Field and The Mere, they have a tight building pattern, distinct domestic scale and an irregularity of form and style reflective of the organic growth of the town centre.
12. The South Norfolk Place-Making Guide<sup>5</sup> (SPD) indicates that one of the significant characteristics of Diss is its open spaces and trees which enhance the layout of the town and complement the character and setting of streets and buildings. It states that new and existing development must integrate well together to create positive relationships, and that the design of new development should be specific to its location and contribute to a locally distinctive sense of place<sup>6</sup>. It also states that where a contemporary approach is to be adopted, then the proportions of the form and elevations, and quality of detailing, will be of particular importance<sup>7</sup>.
13. The appellant's stated design aims<sup>8</sup> are to produce a building of contemporary design consistent with the development's proposed use, and complementary to the locality. The development would comprise four retail units, three forming a continuous line parallel to, and within a few metres of, the site's southern boundary, and the fourth forming a stand-alone unit to the immediate south of the bus turning area. The units would be some 8.5 metres tall, and have simple contemporary styling with minimal articulation. The remaining site would be given over to car parking and service areas, and there would be few opportunities for tree planting or other landscape treatment. Nor would there be any distinction or boundary between the car park areas serving the Thatcher's Needle, and those serving the units.
14. It is argued by the appellant that although the development's internal function reduces the potential for external detailing, a repeated pattern of brick piers on the units' front facades would effectively reduce their visual impact; high entrance canopies would also provide relief for the otherwise blank facades. The appellant also advises that the colour of the composite cladding was selected to reflect that of local traditional materials.
15. I acknowledge that the units' internal function has informed their underlying scale and box form. However, in the context of the more traditional building styles and materials identified in the CAA, the units would appear highly engineered, be clad predominantly in modern material and would have a scale which would be unsympathetic to that of the traditional buildings visible from Park Field and The Mere, which are noted as providing local distinctiveness. This would fail to create a positive relationship with existing development and thus would be contrary to the guidance contained within the SPD, outlined above.
16. Furthermore, although I acknowledge that views of the appeal site from Park Field would be glimpsed and intermittent, for users of Park Road there would be direct views into the site on either side of the Thatcher's Needle as the views would be unobstructed by tree canopies. Moreover, from the north, the

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<sup>4</sup> Diss Conservation Area, Streetscape Map

<sup>5</sup> South Norfolk Place-Making Guide, Supplementary Planning Document, September 2012

<sup>6</sup> Section 3.5.2

<sup>7</sup> Section 3.8.2

<sup>8</sup> Statement of Case on Design Issues, Pegasus Group, August 2016

units would be seen directly behind and in juxtaposition to the Thatcher's Needle. Their contemporary styling, large scale and minimalist profile would sit uneasily with the domestic scale and articulation of the Thatcher's Needle, particularly given the unrelieved expanse of parking area that would provide separation. In comparison with the Thatcher's Needle, the units would appear disproportionately large and dominant on the site.

17. The design and access statement<sup>9</sup> design statement notes that the nature of the site's approved uses dictates that large buildings will be proposed. However, I disagree with this statement. The allocated uses for the appeal site outlined in Policy DIS6 of the Local Plan<sup>10</sup> (LP), include leisure and housing, neither of which necessarily require buildings of this size or scale. Furthermore, this policy notes that developers will be required to ensure their scheme design takes the adjacent CA into account.
18. The design and access statement also states that the scale and massing of the proposal have been informed by location, taking into account the scale and proximity of neighbouring buildings. Although there are buildings of larger scale and limited architectural merit in the general area, the development would be seen primarily in the context of the Thatcher's Needle, which although a commercial development, has an overall form and scale reflective of its position adjacent to the CA.
19. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the CAs. The appeal site occupies a significant and sensitive location between Park Field and the countryside. Where there are views into the site from the north, the trees beyond the sub-station would be largely obscured from view. This would block the existing visual link between the Waveney valley and Park Field and consequently the development would fail to reflect the historic visual and functional links that previously connected Park Field to the River Waveney, and which contribute to the significance of the CA and its setting.
20. Furthermore, it was evident on my visit that the general consistency of the CA's underlying building pattern and proportionate scale enhances the contribution that Park Field and The Mere, which are not in themselves particularly extensive, make to the town centre. The introduction of development of disproportionate scale and contemporary design on the periphery of the CA, would intrude into and detract from, that understated relationship between townscape and open space. As such I conclude the large scale and unsympathetic form of the proposed retail units would detract from, and fail to preserve or enhance the CA or its setting.
21. Consequently, I conclude that the development would have a detrimental impact on the character and appearance of the locality and the CA, as it would fail to have regard to the traditional character and form of local buildings. As such, the development would fail to comply with Policy 2 of the Core Strategy<sup>11</sup> (CS) which requires development to respect local distinctiveness, including townscape and the varied character of market towns and villages, and LP Policy

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<sup>9</sup> KMB Ltd, Design and Access Statement, May 2015

<sup>10</sup> South Norfolk Local Plan, adoption version October 2015

<sup>11</sup> Joint Core Strategy Broadland, Norwich and South Norfolk, adopted March 2011, amended January 2014

- DM1.4 which requires developers to make a positive contribution to local character and distinctiveness.
22. The development would also fail to meet the requirements of LP Policy DM3.8 which expects development to respect adjoining structures, spaces, routes and the local landscape, and LP Policy DM4.10 which states that development proposals must have regard to the historic environment and take account of the contribution heritage assets make to the significance of an area. It would also, as outlined above, fail to comply with Section 72 of the Act.
23. Although not cited in the reasons for refusal, LP Policy DIS6 is of relevance in this appeal. This, as outlined above, requires development to take account of the adjacent CA in addition to other site specific requirements. In this regard, the development would fail to comply with LP Policy DIS6.
24. I acknowledge that there are existing buildings in the vicinity of the appeal site that also detract from the setting of the CA, but that does not justify allowing a development that would result in further harm. Furthermore, given the apparent age of those buildings, it is likely their construction preceded current planning policy and I am required to determine the appeal on its own merits. Moreover, as noted above, the CAA outlines the expectation that development on the southern side of Park Road should be considered as providing opportunities to improve the setting of the CA, which I have concluded would not be the case in this instance.
25. I also acknowledge that the officer's report was supportive of the scheme's design and that amendments to the original were made during the application process. Nonetheless, this does not alter my reasoning that the unsympathetic design, its impact on the setting of the CA and limited use of traditional materials would not make a positive contribution to the character and appearance of the area.
26. The appellant has drawn attention to Paragraph 126 of the National Planning Policy Framework (the Framework) which requires councils to set out a positive strategy for the conservation and enjoyment of the historic environment, and argues that the development would meet those policy tests. It is apparent from the policy evidence before me that the Council has set out a positive strategy, but I am not satisfied that the development meets the policy tests.

### *Trees*

27. The Council raised a concern that three protected mature trees (T6, T7 and T10)<sup>12</sup> on the site's eastern boundary, which mark a former avenue leading from the town to the river<sup>13</sup>, would be harmed by the proximity of the development's proposed hardstanding. It is proposed that construction would extend into their Root Protection Areas (RPAs). In addition, some crown lifting would be required to enable vehicles to pass beneath.
28. The evidence before me indicates that the nominal RPAs of T7, T10 and to a lesser extent T6, extend across areas proposed as hardstanding for the retail units. It is also evident that the nominal RPAs of T6 and T7 already extend under significant areas of tarmac to their immediate east (a car park) and

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<sup>12</sup> Although Aspect Arboriculture's report addressed only the impact of the development on trees T7 and T10, it was confirmed during the hearing that T6 would also be affected by the development.

<sup>13</sup> Verbal evidence, Town Council

north (the bus turning area). The appellant argues that the effect of existing adjacent hardstanding was taken into account when determining the extent of the RPAs.

29. I recognise the difficulty of accurately determining root areas without trial holes. However, the British Standard<sup>14</sup> (BS) highlights that pre-existing site conditions, for example the presence of roads, can affect the symmetry of root growth and recommends modification of the shape of the RPA in such circumstances. Given the age of the trees relative to the car park and bus turning area<sup>15</sup> it is likely that the roots of T6 and T7 would have been damaged by the excavations associated with these tarmac areas. Consequently, I am not satisfied that the RPAs are representative and consider it highly likely that the current active root areas of T6 and T7 extend further into the appeal site than the RPA circumferences shown.
30. As such, whilst I recognise that the proposed disturbance to the notional RPAs of T6 and T7 would be within the BS guidelines of 20%, evidence before me indicates that T6 and T7 may have already had up to 50% of the area within the notional RPAs affected by previous construction work. Further damage within the current root zone could have a disproportionate effect on the trees' future health and longevity.
31. The appellant pointed out evidence of previous crown lifting at the site visit. I concur that the form of T6 and T7 indicate that further crown lifting would not significantly alter the shape of their upper canopies as although parts of the canopies extend to within a metre or so of ground level, the relevant branches appear to join the trunk significantly higher up.
32. I appreciate that construction methods could be prescribed by condition in order to protect the trees. However, in addition to my concerns in relation to the areas of proposed hardstanding, I am also mindful that the nominal RPA of T7 extends to less than a metre of the footprint of Unit 4. Given my concerns in respect of the accuracy of the RPAs shown and the likelihood that the actual roots extend asymmetrically into the site, it is likely that the excavation associated with the building, and compaction from the movement of site traffic around this corner of Unit 4 would also have a detrimental effect on the tree's future health and longevity.
33. LP Policy DM4.8 states that the Council will safeguard and promote the appropriate management of protected trees, unless the need for and benefits of, a development clearly outweigh their loss. Were the potential harm to the trees the only identified adverse effect arising from the development, I would not necessarily consider such harm sufficient to warrant dismissal of the appeal. I also appreciate that the appellant recognises their significance. However, notwithstanding the potential, (although disputed), economic benefit for the town arising from additional retail floorspace, the potential adverse effect of the development on the trees is a further shortcoming of the proposal. As such, I conclude that the development would fail to safeguard the protected trees, contrary to LP Policy DM4.8, as outlined above.

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<sup>14</sup> BS 5837:2012

<sup>15</sup> Neither of these areas is shown on the 1939 town plan included in the CAA

### *Vitality of the Town Centre*

34. The site is allocated for non-food retail, leisure, offices and housing under LP Policy DIS6, and this policy is up to date, but the Town Council questioned whether the retail floorspace proposed could be accommodated without having a detrimental effect on existing businesses in the town centre, and whether the development complies with current policy in this regard. In addition, the Town Council and members of the public have recently raised a significant sum of money to support the Heritage Triangle initiative which aims to regenerate the town centre and increase footfall to independent shops.
35. Both main parties agree that Paragraph 24 of the Framework, which states that sequential tests are required for town centre uses that are not in an existing centre and not in accordance with an up-to-date plan, would not apply in this instance. The main parties also agree that as LP Policy DIS6 allows retail use on the appeal site, the retail impact assessment required by Paragraph 26 of the Framework for retail development outside town centres, would not be required.
36. However, my attention was drawn to LP Policy DM2.4 which states that all proposals for retail, leisure and office uses of above 1000 sqm outside the town centre area of Diss, will be required to submit a retail assessment. This would review the impact of the proposal on existing, committed and planned public and private investment in a centre in the catchment area of the proposal, and the impact of the proposals on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area. As the Local Plan was adopted after the Framework, I give LP Policy DM 2.4 full weight. In addition, the evidence before me appears to support the Town Council's concern in relation to retail impact.
37. The CS states that Diss has the development potential for a further 4500 sqm of comparison goods shopping over the plan period. However, the supporting text to LP Policy DM2.4 states that the figures in the CS can be regarded as optimistic, and notes the conclusions of the 2011 Portas Review that shopping habits are changing. I also note that the CS predates the establishment of the Trust which was formed to revitalise the historic core of Diss<sup>16</sup>; its formation and success in gaining Lottery and government support suggests there was real concern regarding the future of the town centre at this time.
38. LP Policy DM2.4 states that the development of new or improved retailing and other main town centre uses will be encouraged at a scale appropriate to the form and functions of Diss. This development, at 3,948 sqm would be close to the suggested limit given in the CS. As such, notwithstanding that the appeal site is allocated as mixed use, the development would represent a significant addition to retail floorspace. Furthermore, given the text of LP Policy DM2.4, I agree with the Trust and Town Council that the projections of the CS are less relevant now, given the current financial climate and changes in shopping habits.
39. In response to concerns that the development would have a detrimental impact on footfall in the town centre, the appellant argued that there was no evidence to demonstrate that such footfall would be affected. The officer's report noted that there was a strong likelihood that people visiting the proposed units would

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<sup>16</sup> Diss Heritage Triangle Trust, representation October 2016

also visit the town centre. The appellant noted that the proposals do not need to accord with every element of the development plan and that it should be reviewed against planning objectives as a whole.

40. However, my observations led me to conclude that although the appeal site is visually linked to Park Field, it is not particularly well linked to the approaches to the town centre. LP Policy DIS6 notes that crossing Park Road safely can be difficult and during the hearing, the Town Council noted that surveys have shown that 40% of people driving to Morrison's do not venture into the town centre. Having viewed the surroundings I consider people unfamiliar with the town would not appreciate the proximity of, or route into, the main town centre.
41. In addition, although the Council reiterated during the hearing that were the appeal to be allowed, a condition would be required to limit the retail function of the units to non-food uses, I noted food is available all day at both Morrison's and the Thatcher's Needle. This further reinforces my view that users of the development would not have particular incentive to venture further afield, and that the limitation of the development to non-food retail use would not necessarily encourage shoppers into the town for refreshment.
42. The wording of LP Policy DM2.4 was raised with both main parties during the hearing. The Council maintained that the development would be in accordance with the site allocation and I appreciate that the Council maintains that LP Policy DIS6 renders further impact assessment unnecessary. I also acknowledge that mixed use does not prohibit single or dual use development, or the justification of one use over another, as argued by the appellant. However there is nothing in LP Policy DM2.4 which leads me to conclude that site allocation policies render further impact assessment redundant, or indeed that there is any conflict with LP Policy DIS6.
43. As such, I am not satisfied that further impact assessment of the development on the retail function of the town centre is unnecessary and I disagree with both main parties in this respect. Consequently, I conclude that the development has not complied with the provisions of the LP Policy DM2.4, with respect to an impact assessment, and that it has not been demonstrated that the development would not have a detrimental effect on the vitality and viability of the existing businesses within the town.

#### *Other matters*

44. The Council has previously approved an outline application for a 3-storey hotel, roughly on the proposed footprint of Units 1-3. This would be a few metres taller and appreciably longer than Units 1-3. The appellant confirmed during the hearing that the indicative design concept included the use of tiles, bricks and render as external finishes; furthermore the arrangement of windows on a hotel would result in a finer level of detail and articulation than that proposed here. As such, although I recognise that the Council has previously approved a building somewhat larger than the proposal before me, its appearance and materials would be likely to be significantly different. Consequently, I give this permission little weight and in any case every appeal is determined on its individual merits.

45. The Town Council and other interested parties have raised concerns in relation to the data collection and conclusions of the transport assessment<sup>17</sup>. My review of the information provided concluded that it is incomplete with regard to tracking information for service vehicles entering and leaving the site from the east. However, no objection has been raised by Norfolk County Council as the highways authority and as far as I can ascertain from the evidence before me, the access points into the development would be sufficiently wide to allow service vehicles to enter and exit from both directions, without having to cross the opposing lane of traffic.
46. I also noted on my visit that there is a spur on the small roundabout adjacent to Morrison's car park to the immediate east of the appeal site, which could facilitate access into the appeal site. However, whilst I note that interested parties consider that access from this point would reduce potential congestion on Park Road, I concur with the Council that they have to determine the application before them. Furthermore, there is nothing in the evidence before me, or indeed in the requirements of LP Policy DIS6, which indicates that this spur has to be utilised for access to the appeal site.
47. Reference has been made within the evidence from interested parties to the impact of the development on views from a future viewing platform to be built next to the Town Council offices at a height of some 70 - 80 feet above the level of The Mere. Having viewed the appeal site from this location, I concluded that although the tops of the units would be visible, there would be sufficient distance and intervening tree cover to diminish their prominence in the view. I also concluded that the height of the platform would be sufficient to enable views to the trees beyond the sub-station.
48. The Town Council raised a concern that the development would not improve connectivity from the town centre to the River Waveney, to the south. However, there is nothing in the evidence before me to indicate that this would be required as part of the site's redevelopment. Furthermore, the Council noted that had such linkage been considered necessary, it would have been included in the requirements outlined by LP Policy DIS6 and I see no reason to disagree with this view.

## **Conclusion**

49. I appreciate that the appellant has liaised with the Council throughout the application process, and that the development before me is an amended design that has been informed by that feedback. Nonetheless, the Committee considered that the scheme was unacceptable and I agree with their decision.

I also appreciate that the development would improve the appearance of a prominent site which is currently rough ground. However, this public benefit would not outweigh the harm I have identified above. Consequently, for the reasons given above and taking all matters into account, I conclude that the development would be contrary to the relevant policies of the Council's Local Plan and Core Strategy and that therefore the appeal should be dismissed.

*Amanda Blicq*

INSPECTOR

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<sup>17</sup> Rowland Bilsland Traffic Planning, SJB/AR/14026, June 2015

## **APPEARANCES**

### **FOR THE APPELLANT**

Michael Robson  
Bhupinder Thandi  
Ben Williams  
Dr Richard Curtis

Cerda Planning  
Cerda Planning  
Pegasus Group  
Aspect Arboriculture

### **FOR THE LOCAL PLANNING AUTHORITY**

Chris Raine  
Robin Taylor  
Chris Bennett

Senior Planning Officer  
Landscape Officer  
Urban Design and Conservation planner

### **INTERESTED PERSONS**

Graham Minshull  
Deborah Sarson  
Tony Palmer  
Mike Rigby  
Ray Bryant  
Brian Falk

Town Councillor, District Councillor  
Town Clerk, Diss Town Council  
Town Councillor, District Councillor  
representing Richard Bacon MP  
Local resident  
Diss Triangle Heritage Trust

## **ANNEX 1**

### **Documents submitted at the Hearing (by agreement)**

1. Officer's report for planning application Ref: 2011/0049/O.
2. Statement from Richard Bacon MP.
3. Costs application from Michael Robson, Cerda planning.