
Appeal Decision

Hearing held on 16 November 2016

Site visit made on

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 03 January 2017

Appeal Ref: APP/C3105/W/16/3151655

**Land adjacent Esso PFS, Stoke Lyne, Baynard's Green, Oxfordshire
OX27 7SG**

- 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 Adalta Real Ltd and McDonald's Restaurant Ltd against the decision of Cherwell District Council.
 - The application Ref 15/00758/F, dated 24 April 2015, was refused by notice dated 3 December 2015.
 - The development proposed is freestanding single storey restaurant with associated drive-thru, car parking and landscaping, installation of customer order display and canopy.
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Decision

1. The appeal is allowed and planning permission is granted for freestanding single storey restaurant with associated drive-thru, car parking and landscaping, installation of customer order display and canopy at land adjacent Esso PFS, Stoke Lyne, Baynard's Green, Oxfordshire OX27 7SG in accordance with the terms of the application, Ref 15/00758/F, dated 24 April 2014, subject to the conditions on the schedule following this decision.

Procedural Matters

2. The development is categorised as a town centre use in the Glossary to the National Planning Policy Framework (the Framework). As the appeal site is within the countryside, the appellant has carried out a sequential test to support the application at the appeal site as required by Paragraph 24 of the Framework. However, the purpose of the sequential test is to demonstrate that there are no alternative sites within a town centre or edge of centre locations. Given that the purpose of this development is to provide roadside facilities for motorists on the A43, which by definition is unlikely to be within a town centre, I consider the sequential test to be of little relevance to this appeal and this was confirmed by the Council at the hearing. Furthermore, the Council's statement¹ notes that disputing whether or not there are alternative sites available will not be beneficial to either party. The Council also confirmed at the hearing that the question of alternative sites does not arise in this case, as there are none under consideration.

¹ Section 3.13

3. As such, although the reasons for refusal state that there has been insufficient robust assessment of alternative locations along the A43, I have concluded that neither a consideration of alternative sites nor the sequential test are determinative factors, and have given them no further consideration in my reasoning.
4. In addition, the Council brought a DOT circular to my attention². This states³ that in determining applications for new or improved sites for roadside facilities, local planning authorities should not need to consider the merits of spacing of facilities beyond conformity with the maximum and minimum criteria established for safety reasons. Applications should be determined on their specific planning merits. This wording was discussed at the hearing and it was agreed between the main parties that the suitability of the appeal site should be determined on its own merits, rather than in the context of potential alternatives.
5. Reference is made in both the officer's report and the Council's statement to Policy TR37 of the Non-Statutory Local Plan 2011. However, the Council confirmed at the hearing that as this policy refers specifically to development within the boundaries of existing service areas, it has no relevance to this appeal. Accordingly, I have not referred to it in my reasoning.

Main Issues

6. The main issues are:
 - whether there is justification for the development in this location having regard to local and national policies; and,
 - the effect of the development on the character and appearance of the area.

Reasons

Location

7. The appeal site is a small area of former agricultural land situated beside a petrol filling station located on the A43, which is a major trunk road linking the M40 to the M1 and the Midlands. The site is bounded on three sides by development comprising roads and the filling station, and on the fourth side by a planted highway verge area. The filling station contains a small Spar supermarket, Subway and Greggs food outlets and I noted on my visit that there are spaces for 10-12 people to sit down around four small tables. Although there were some 20 parked and largely empty vehicles around the hardstanding at my visit, there were few people in the shop itself. Consequently, I concluded that most of these vehicles belonged to staff.
8. The development comprises the construction of a McDonald's restaurant with café and drive-thru facilities. The Council considers that there is no established need for a food outlet serving the motorist in this location as in addition to the facilities at the adjacent filling station, the appeal site is located less than a mile from the Moto Service Station at Junction 10 of the M43.

² Department of Transport Circular 02/2013

³ Section B8

9. It is proposed by the appellant that the development would serve mainly passing trade; modelling contained within the transport assessment⁴ and based on an existing roadside McDonalds in Oxfordshire, indicates that 59% of the trips generated to the facility on a Friday peak period⁵ would be likely to be passing trade, and this would increase to 75% at Saturday peak period⁶.
10. With regard to the need for the development, the Council cited 'saved' Policy TR8 from the 1996 Local Plan⁷ (LP) in its reasons for refusal; this states that beyond the built-up limits of settlements, the release of new sites for commercial facilities for the motorist will be permitted only where the need can be clearly demonstrated. However, Paragraph 215 of the Framework requires that due weight should only be given to relevant policies in existing plans adopted prior to the Framework according to their degree of consistency with it. As such, the relevance of LP Policy TR8 to this appeal is predicated upon its consistency with the Framework.
11. The Council argues that as Paragraph 31 of the Framework states that the primary function of roadside facilities should be to support the safety and welfare of the road user, the Framework also requires a demonstration of need. However, where need is not the primary function, Paragraph 31 of the Framework does not prohibit the provision of roadside facilities. In this respect, the Framework does not require a demonstration of need to facilitate development. Consequently, LP Policy TR8 is somewhat inconsistent with the Framework and as such, I give LP Policy TR8 only limited weight.
12. The Council has raised concerns that the development would become a destination in its own right and that this would increase traffic volume. To some extent this concern is supported by representations from interested parties living in nearby towns such as Bicester, who indicate that they would make a special journey. However, as such journeys are likely to be undertaken in those customers' leisure time, it is likely that their timing would be largely outside the periods of peak traffic flow on the A43.
13. The Council has also raised a concern in relation to staff travel arrangements. Given the site's relative remoteness and lack of alternative modes of travel, I concur with the Council that it would be more than likely that staff would use private vehicles to go to work. It was noted by the appellant at the hearing that although McDonalds is committed to instigating travel plans for its staff, the high proportion of part-time staff on shift work would render car sharing impracticable. The appellant suggested that were the appeal to be allowed, a Travel Plan for staff journeys could be imposed by condition, and a suggested condition was supplied after the hearing. However, I am not satisfied that such a condition would be enforceable and as such I have given it little weight in my reasoning.
14. I conclude that there would be an incremental increase in journeys requiring use of private vehicles associated with the facility's staff, as well as leisure trips generated by residents of nearby towns. However, although the transport modelling provided indicates that destination trips would account for some 25 – 41% of projected journeys at the peak periods considered, I do not

⁴ ADLTraffic Engineering Ltd, June 214, Table 6B

⁵ 1700 - 1800 hrs

⁶ 1200 - 1300 hrs

⁷ Cherwell District Council, Cherwell Local Plan 2011-2031 Appendix 7 list of replaced and retained saved policies

consider that this would have a severe impact on the efficient operation or safety of the highway. This is also the conclusion reached by the Council's planning policy consultee⁸, who states that the development is of scale which is unlikely to cause significant transport impacts. I am also mindful that neither Highways England nor Oxfordshire County Council have objected to the development, and on the basis of the evidence before me, I see no reason to disagree with their conclusions.

15. I acknowledge the concerns of the nearby parish councils with regard to the likelihood of increased congestion. However, with regard to the lack of traffic modelling for Monday mornings, the evidence before me indicates that it would be similar to that of Friday evening, which has been assessed. Moreover, whilst I appreciate that there are local concerns in relation to safety issues at the roundabout there is no evidence before me to support such concerns. Accordingly, I am unable to conclude that there are existing safety issues or that the development would have residual safety impacts sufficient to warrant dismissal of the appeal.
16. Paragraph 32 of the Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. There is nothing in the evidence before me to indicate that the incremental increase in journeys generated by the development would represent a severe transport impact and therefore I conclude that the development should not be refused on transport grounds.
17. I have outlined above why I consider the Council's requirement for a demonstration of need for the development is based on a policy which is inconsistent with the Framework, and therefore carries limited weight in the determination of this appeal. Whilst I have found some harm in relation to an increase in vehicular movement and an absence of sustainable transport alternatives, I have not found sufficient harm in relation to transport issues, to warrant dismissal of the appeal on these grounds alone.

Character and appearance

18. The A43-B4100 road junction is the nucleus of a small cluster of development that includes the filling station, a trading estate and a small number of reasonably large dwellings on sizeable plots. The trading estate and dwellings are well-screened from the roads by roadside vegetation. The filling station is of modest size, and although it is prominent at the roundabout, for travellers on both the A43 and the B4100 there is a notable transition from development to open countryside once away from the junction.
19. The development would comprise a building positioned more or less parallel to the A43, with car parking areas situated between it and a side road leading to the B4100. Visibility would be limited as the development would be partly screened from the south by the existing filling station, and from the north by existing highway planting on the northern verge of the A43. Although the building and associated light columns of the development would be prominent, the views would be transient as they would be seen primarily by motorists. Furthermore, the development would be seen in the immediate context of the adjacent filling site and the associated highway structures. As such, I concur

⁸ Officer's report, 3.2

- with the conclusions of the landscape assessment⁹ that the site has a localised visual envelope. It also sits within an appropriate context for the development proposed.
20. Beyond the immediate environment of the A43-B4100 junction, the countryside has rolling topography and expansive views across open agricultural land. The Council has indicated that as the appeal site formerly fell within an area designated as having high landscape value, this signifies that the landscape quality is high. However, this designation is of little relevance as it no longer applies and it nonetheless remains a fact that the immediate context of the appeal site is now typified by transport infrastructure.
21. The most recent landscape character assessment¹⁰ (LCA) indicates that the appeal site falls within a Wooded Estate lands character area. This is described as a wooded estate landscape characterised by arable farming and small villages with a strong vernacular character. The guidelines contained within the LCA state that the visual impact of intrusive land uses should be minimised through screening, to help integrate such development into the surrounding countryside. The guidelines also state that new development should be of a scale that is appropriate to the landscape type.
22. In this instance, I acknowledge that notwithstanding the proposed landscape scheme, there would be a need for the development to be visible. However, as noted above, the site is visually contained which would minimise its intrusiveness into the surrounding countryside. Furthermore, its scale would be comparable to the existing filling station and it would be contained by existing features and vegetation. As such I consider its scale would be appropriate for the area.
23. Whilst I appreciate that the development would extend the transport infrastructure into an adjacent area of open land, as I have noted above, it would not appear out of context. Nor would landscape features contributing to the underlying landscape character, as identified in the LCA, be lost. As such there is nothing in the evidence before me, or in the LCA, that indicates the development would have a significant harmful effect on the landscape character of the area.
24. Moreover, immediate views of the development would be restricted to motorists on the A43 or those using the facility, and to a lesser extent, users of the trading estate. As motorists are generally considered as having low sensitivity in the context of landscape character and visual appraisal studies, I give the visual impact of the development on their views, little weight. Interested parties have raised concerns in respect of the impact of the development on the setting of the trading estate. However, the estate is not directly opposite the appeal site and in any case the plans show that the shared access road boundary would be planted with vegetation to provide screening, were the appeal to be allowed.
25. At the request of Stoke Lyne Parish Council I viewed the site from the approaches to the village some 1.5 miles away¹¹ from the appeal site. However, whilst the filling station canopy and light columns are visible, they sit

⁹ EDP, June 2016

¹⁰ Oxfordshire Wildlife and Landscape Study, contained in Statement of Case Volume 2

¹¹ Viewpoint 7, EDP Volume II, June 2016

below the horizon, with a wooded backdrop, and are not particularly intrusive in the overall appreciation of the rural landscape from that viewpoint. Whilst I acknowledge that the proposals before me would extend development, I am not satisfied that it would have such an impact when viewed from further afield as to cause harm.

26. LP Policy ESD13 states that development will be expected to respect and enhance local landscape character, and that proposals will not be permitted where they would cause undue visual intrusion, undue harm to important landscape features, be inconsistent with local character, have an impact on areas judged to have a high level of tranquillity, or harm the setting of landmark features or the historic value of the landscape. I have outlined above why I consider this site does not make a positive contribution to the underlying landscape character of the area, as it is viewed very much in the context of the localised development of transport infrastructure. Its location next to the busy A43 also precludes it being judged as having a high level of tranquillity. I have also reasoned above that the appeal site has a limited visual envelope. As such I conclude that there would not be undue visual intrusion. Consequently, the development would not be contrary to LP Policy ESD13.
27. Saved LP Policy C8 states that sporadic development in the open countryside, including in the vicinity of motorway or major road junctions, will generally be resisted. Its supporting text states that such development must be resisted in order to maintain the countryside's attractive open rural character. However, for reasons given above, I am satisfied that the development would not harm the attractive open rural character of the countryside. In addition, the development would be located adjacent to existing development. Consequently, I see no significant conflict with saved LP Policy C8.
28. I acknowledge that the Council's position with regard to the restriction of development in the countryside is broadly consistent with the underlying theme of Paragraph 17 of the Framework. This states that core planning principles should recognise the intrinsic character and beauty of the countryside. However, I do not consider that development of this small, roadside site, positioned as it is between two roads, an existing filling station and a wooded highway verge, would cause significant harm to the intrinsic character and beauty of the countryside. As such, there would be no conflict with Paragraph 17 of the Framework.

Other matters

29. Representations from interested parties raised concerns in respect of lighting and litter. With regard to lighting, the lighting associated with the filling station and street lighting is visible from Stoke Lyne¹² and it was drawn to my attention that light pollution associated with the junction's development would increase. In response, the appellant referred to a lighting scheme previously implemented by McDonalds in a sensitive site within the New Forest, and suggested that it would be possible to use a similar approach here.
30. As the suggested conditions include a condition for an external lighting scheme, I have concluded that this concern could be addressed through condition and that the adverse effects of lighting could be mitigated to the extent the local planning authority considers appropriate.

¹² Statement of Case, Volume 2, Viewpoint EDP A

31. With regard to litter, it was pointed out that the existing food outlets at the filling station generate litter in the immediate vicinity, and that roadside litter would be likely to increase were the appeal to be allowed. However, there is insufficient evidence before me to enable me to conclude that litter would be a problem of such magnitude as to warrant dismissal of the appeal. Moreover, it is not a concern that could be addressed by condition. However, the appellant noted that McDonalds does undertake to carry out frequent litter picks¹³ covering a minimum radius of 150 metres, as well as ensuring there is engagement with the local community. As such, whilst I recognise the concerns I consider this would provide appropriate mitigation for the appeal site and its immediate area. In addition, the Council would be able to ensure litter bins were provided on the site as part of the landscape scheme.
32. Concerns have also been raised in respect of the advertising and signage for the development. However, this would be the subject of a separate planning application and does not fall within the scope of this appeal.
33. A business at the trading estate has also drawn attention to a potential conflict between access to the development and access to the estate. Whilst I recognise that my visits to the appeal site were a snapshot in time, on both occasions (one at peak period) there was no traffic accessing the trading estate and the gates were closed. Furthermore there is no evidence before me to support the assertion that there would be such conflict. As such, I give this argument little weight.

Conditions

34. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. In respect of the plans, I have imposed a condition specifying the drawings upon which I have based this appeal, as this provides certainty.
35. I have imposed conditions to ensure full design details and external finishes proposed for the roofs, walls, doors and windows are approved by the local planning authority in order to safeguard the satisfactory appearance of the development.
36. With regard to lighting, I have imposed a condition to ensure the local planning authority is able to set restrictions on the maximum luminance and spill-out of the lighting scheme. This is in order to safeguard the amenities of residents and to control light pollution, as well as ensuring highway safety.
37. I have also imposed conditions requiring the submission of a landscape scheme, including site furniture and areas of hardstanding, to ensure a pleasant environment is created around the building as well as the retention of existing vegetation to provide screening, and the provision of adequate litter bins.
38. To ensure highway safety, I have imposed a condition requiring the construction of access works between the site and the highway, as well as the construction of boundary treatments along the boundary with the A43 prior to first occupation.

¹³ Statement of Nick Hemstock, May 2015

39. Finally, I have imposed a condition requiring the undertaking of remediation to deal with the identification of previously undetected contamination. This is to ensure there are no risks to the future users and neighbouring land should contamination be identified.
40. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance. In particular I have amended the suggested pre-commencement conditions to allow development to ground floor slab level to proceed before approval of further details as I see no reason to delay the start of works until such conditions are discharged.

Planning Balance

41. The Council's statement notes that the development would not meet its criteria for small scale employment sites in rural areas. However, the existing filling station and the trading estate are already providing employment at this location, and notwithstanding that the towns of Banbury, Bicester and Brackley are some distance away, the countryside between these towns contains smaller settlements whose residents would benefit from employment opportunities in the local area. Furthermore, the Council's planning policy consultee states that the proposals would lead to the creation of jobs and economic growth, which is the key focus of the Local Plan and the Framework. I see no reason to disagree with this conclusion.
42. With regard to environmental considerations, the evidence before me does not demonstrate that the development would cause significant harm to the environment. Insofar as it would be built to a 'very good' rating under the BREEAM¹⁴ classification, the environmental impact of construction would be reduced to levels consistent with current best practice, with limited environmental benefits.
43. With regard to social considerations, the evidence before me indicates that McDonalds has a commitment to youth training in the workplace, supporting grassroots football and working with the British and Irish farming communities to ensure a sustainable future. Whilst I concur with the Council that the social benefits to the local community would be limited, other than through the provision of increased choice for leisure activities, there would be some limited benefit to the social health of the wider community.
44. I appreciate that the development would represent a limited encroachment into previously undeveloped land, and that the establishment of a McDonalds at this location is likely to attract destination journeys as a proportion of its trade, as well as incurring travel for staff where there are no sustainable alternative modes of transport. However, I have not found any significant conflict with those relevant Local Plan policies that are consistent with the Framework, or the Framework itself. In addition, such harm in relation to location as I have found, would be outweighed by the benefits to be gained from additional jobs and economic growth, as well as the more limited environmental and social benefits I have outlined above.

¹⁴ Building Research Establishment Environmental Assessment Method

Conclusion

45. For the reasons given above and taking all matters into account, I conclude that the development would not result in any material conflict with the relevant policies of the Council's Local Plan and that therefore the appeal should be allowed.

Amanda Blicq

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Charles Mylchreest	EDP
James Pereira	Queens Counsel
Matthew Carpenter	Planware Ltd
Nick Hemstock	McDonalds Ltd
Rob Green	ADL Traffic Engineering Ltd

FOR THE LOCAL PLANNING AUTHORITY

Caroline Roche	Principal Planning Officer
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INTERESTED PERSONS

Hugo Brown	Councillor, Stoke Lyne Parish Council
James MacNamara	District Councillor

ANNEX 1

Documents submitted at the Hearing (by agreement)

1. Signed Statement of Common Ground, including conditions.

Documents submitted after the Hearing (by agreement)

2. Suggested condition in relation to Travel Plan.

SCHEDULE

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 and documents: Application forms, Design and Access Statement, Planning Statement, Sustainability Statement, Ecological Assessment, Transport Assessment and drawings numbered: 6566-PL-201A Location Plan; 6566-PL-202B Block Plan; 6566-PL-203A Existing Site Plan; 6566-PL-204A Proposed Site Layout; 6566-SK-205A Proposed Elevations; 6566-PL-206A Proposed Ground and Floor Roof Plans.
3. Notwithstanding condition 2, no development shall take place above ground floor slab level until full design details, including colour and finish of the composite aluminium and louvres to be used in the construction of the roof of the development hereby approved shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4. Notwithstanding condition 2, no development shall take place above ground floor slab level until details of the doors and windows hereby approved, at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour and finish, shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
5. No development comprising the walls of the development hereby approved shall take place until samples of the natural limestone tile to be used 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.
6. Notwithstanding condition 2, no development shall take place above ground floor slab level until details of the external lighting shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained thereafter.
7. Notwithstanding condition 2, no development shall take place above ground floor slab level until details of a landscape scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - 1) Details of proposed tree and shrub planting including their species, number, sizes and positions, together with the layout of grass seeded or turfed areas.
 - 2) Details of existing trees and hedgerows to be retained as well as those to be removed, including existing and proposed ground levels at the base of each tree or hedgerow and the minimum distance between the base of each tree and the nearest edge of any excavations.
 - 3) Details of the hard surface areas including vehicular pavements, pedestrian footways and other areas, areas of reduced-dig, crossing points and steps.

- 4) Details of litter bins to be provided.
8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the buildings or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.
9. Except to allow for the means of access and vision splays, the existing hedgerow along the north western boundary of the site shall be retained and properly maintained at a height of not less than 3 metres. If any hedgerow plant dies within five years from the completion of the development it shall be replaced with a plant of the same species and shall thereafter be properly maintained in accordance with this condition.
10. Prior to the first occupation of the proposed development the access works between the site and the highway shall be formed, laid out and constructed strictly in accordance with the local highway authority's specifications and shall be undertaken within a Section 278 agreement under the Highway Act 1980.
11. Prior to the first occupation of the development hereby approved, details of the boundary treatment to be erected along the common boundary of the A43 Trunk Road shall be submitted to and approved by the local planning authority in consultation with Highways England.
12. If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the local planning authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.