

## Appeal Decision

Site visits made on 20 February 2017 and 9<sup>th</sup> March 2017

**by Zoe Raygen Dip URP MRTPI**

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

**Decision date: 22<sup>nd</sup> March 2017**

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### **Appeal Ref: APP/P3040/W/16/3162264**

**Wheatsheaf Inn, 11 Nottingham Road, Cropwell Bishop, Nottinghamshire NG12 3BP**

- 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 Marstons Estates Ltd against the decision of Rushcliffe Borough Council.
  - The application Ref 16/00139/FUL, dated 11 September 2015 was refused by notice dated 19 July 2016.
  - The development proposed is erection of use class A1 local needs convenience retail unit, with parking, landscaping, acoustic fencing and associated works.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of use class A1 local needs convenience retail unit, with parking, landscaping, acoustic fencing and associated works at Wheatsheaf Inn, 11 Nottingham Road, Cropwell Bishop, Nottinghamshire NG12 3BP in accordance with the terms of the application, Ref 16/00139/FUL, dated 11 September 2015 subject to the conditions set out in the schedule to this decision notice.

### **Costs**

2. An application for costs was made by Marstons Estates Ltd against Rushcliffe Borough Council. This application is the subject of a separate decision.

### **Procedural matter**

3. I have given main parties the opportunity to comment on Paragraph 29 of the judgement *Mayowa-Emmanuel v Royal Borough of Greenwich* [2015] EWHC 4076 which identified that paragraph 32 of the National Planning Policy Framework (the Framework) addresses matters of highway capacity and congestion, rather than highway safety considerations in themselves. I have taken the judgement and the responses by main parties into consideration in my determination of the appeal.

### **Main Issues**

4. The main issues are firstly, the effect of the proposal on highway safety and secondly the effect of the proposal on the living conditions of the occupiers of surrounding residential properties with particular regard to noise and disturbance.
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## Reasons

### *Highway safety*

5. The appeal site lies on the northern side of Nottingham Road and is a car park accommodating about 40 spaces serving the Wheatsheaf Inn which is directly on the opposite side of the road. To the west of the appeal site is Mill Lane, a narrow street serving mainly residential properties. Vehicle access to the site is currently taken from Mill Lane and Nottingham Road. There are parking restrictions marked out by double yellow lines extending a short way either side of the road junction between Mill Lane and Nottingham Road and outside 11-15 Nottingham Road. Otherwise there is no restriction on on-street parking within the vicinity of the appeal site. There is a bus stop adjacent to the vehicle access to the site from Nottingham Road.
6. The proposal to build a retail unit on the site would reduce the car parking available on site to 16 spaces to be shared between the pub and the shop. The appellant relies on data within a Transport Statement with addendum prepared by Mayer Brown 2015 (TS) and the Croft Transport Solutions report 2014 (CTS). I visited the site and the existing co-op in the village three times, each time staying for a lengthy period of time. Twice on the 20<sup>th</sup> February around mid-afternoon and early evening and once early evening on the 9<sup>th</sup> March. Each time I saw that there was a high turnover of car parking availability at the existing co-op. I consider therefore that the findings regarding the length of average visitors stay within the retail unit detailed in the CTS to be reasonable.
7. I acknowledge that the CTS is based on three stores within the north west, each one within a different locality. However, one of the stores was located in a rural area with 9 car parking spaces which would share some similarities with the appeal proposal. In this case the average length of stay was 5.9 minutes. TRICS (Trip Rate Information Computer System) data commonly used in these circumstances assumes trip rates based on an hourly basis whereas in this particular circumstance, based on the CTS and my observations on site I accept that at least 2 customers would be accommodated per 15 minutes. I see no reason therefore not to accept the findings of the TS in this respect and I note the Council and the Highway Authority have not raised any issues with the methodology or the findings.
8. The TS advises that the proposed store would generate a maximum of 40 trips within the afternoon peak period based on figures from TRICS. Although the actual traffic levels may vary from these figures, they provide reasonable estimates based upon the size and location of the retail unit. Traffic generation caused by the new development outside peak periods would be lower.
9. Accordingly from traffic surveys within the TS it has been ascertained that the combined maximum parking demand for the pub and the retail unit would be 20 cars. There are two periods (1630 to 1745 and 1830 to 1945) where demand exceeds supply by up to two cars in the late afternoon and four in the early evening within the week. On a Saturday demand would exceed supply by one space between the hours of 2015 and 2045. There is no dispute between the parties therefore that the proposal would result in some on street parking.
10. The relatively narrow width of Nottingham Road means that if cars were parked on the carriageway then it would effectively create a single lane for traffic. However, at my first site visit at mid-afternoon there were no cars parked on

the street and in the evening there was only one. At my third site visit there were no cars parked on the street. While I appreciate that this is just a snap shot in time I have been provided with no evidence that on street parking is already at a high level near the appeal site.

11. I saw that visibility along Nottingham Road is good in both directions, both from the proposed access to the appeal site and at the Church Street/Nottingham Road junction. Even during the peak period of trip generation for the retail unit, given the availability of on street parking within the vicinity of the appeal site and the relatively low numbers of overspill parking at only certain times of the day I see no reason why this cannot be accommodated safely on street without causing harm to the visibility of both junctions.
12. Although the TS lists a number of bus services serving the village throughout the day, it is not clear whether they all stop at the bus stop adjacent to the appeal site. The appellant's statement refers to only five bus services using the adjacent bus stop for a limited time to drop off and pick up passengers within a day. This has not been disputed by the Council. Furthermore, the number of HGV vehicles visiting the site would be restricted to two per day. As a result of these very limited numbers of bus and HGV movements, together with the small number of expected displaced parking at only certain times of the day I consider the likelihood of severe congestion to the highway network resulting in detriment to highway safety to be unlikely.
13. It follows therefore that I consider it unlikely that the conflict would be so severe so as to prevent the two HGV vehicles entering the site each day. The appellant has submitted swept path analysis which demonstrates that HGV can enter and exit the site safely even with cars parked on the highway. I have seen nothing to lead me to a contrary view and therefore it is unlikely that servicing would take place from the road.
14. The Council are also concerned about the potential conflict with vehicles making deliveries to the Wheatsheaf. However, I have been provided with no evidence regarding the number or timing of deliveries to the Wheatsheaf. Even if it were the case that deliveries to the pub take place from the road, the circumstances I have described above means it would be unlikely that congestion would be severe.
15. Reference has been made to use of the car park by vehicles other than those using the pub, in particular by car owning residents of Mill Lane and local businesses who have no off street parking available. Photographs have been submitted by interested parties showing the car park full. I saw that the car park is available for permit holders only and the Council advise that the arrangement to allow residents to park in the car park has ceased. While I appreciate the resident's concerns, the car park is a private one that could be withdrawn from use at any time.
16. On my first site visit at mid-afternoon the car park was occupied by one car and in the evening by six cars. On my second site visit there were 11 cars parked in the car park. On all occasions the combination of parking at the car park and the existing co-op I observed would have been accommodated within the 16 spaces that would be available at the proposed store. I acknowledge that these are limited instances, however they reinforce the findings of the TS and the CTS and I have seen no substantive evidence to refute these findings. While parking is likely to be higher for the pub later in the evening as identified in the TS I

have already found that the envisaged limited overspill parking could be safely accommodated on street. Furthermore, I note that the Highway Authority consider that the addendum to the TS including information relating to the CTS addressed its original concerns to the proposal resulting in it withdrawing its objection.

17. I agree with the Council that the method people use to access the shop cannot be controlled. Furthermore, it is likely that customers may access the shop in their car on the way to or from work or dropping children off at school. However, I am also mindful that the shop would serve a considerable residential population that would be in walking distance of it which may reduce the number of car trips. The proposal includes a separate access for pedestrians and cyclists with a segregated footway to the shop entrance. I do not envisage therefore that there would be significant conflict between pedestrians, cyclists and traffic.
18. While therefore it is likely that some customers would visit the shop by car, it would also be a local service, safely accessible to the residents of the village, by means other than the car which would be in accordance with paragraph 7 of the Framework.
19. For the reasons above I conclude that the proposal would not be harmful to highway safety. Therefore there would be no conflict with Policy GP2 of the Rushcliffe Borough Non Statutory Replacement Local Plan 2006 (LP) and paragraphs 32 and 35 of the Framework. These require, amongst other things, that a safe and suitable access to the site can be achieved for all people and without detriment to highway safety. Furthermore development should accommodate efficient delivery of goods and services and create safe and secure layouts which minimise conflicts between traffic and cyclists and pedestrians.
20. As I have found that the proposal would not be harmful to highway safety taking into account current parking restrictions then the issue of whether the appellant would pursue a Traffic Regulation Order has not been determinative.

#### *Living conditions*

21. 2 Nottingham Road is sited adjacent to the site and is set back from the road. It is a bungalow with rooms in the roof. Its side gable faces the site containing three clear glazed windows. Those at ground floor serve a kitchen and a living room (secondary window).
22. The Noise Assessment Report prepared by Blue Tree Acoustics 2016 (NAR) makes an assessment of the impact of the proposed operation of the shop on the living conditions of the closest residents, the occupiers of No 2. The main cause of noise would result from the HGVs delivering goods to the store. Each delivery would take about 45 minutes and with mitigation measures would result in a noise impact of around +10 dB. British Standard 4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound (BS4142:2014) states that a difference of around +10dB is likely to be an indication of significant adverse impact depending on the context.
23. In this regard the existing use of the site is a car park which I understand until recently has been unrestricted with vehicles parked overnight and during the day. I am also mindful that one of the mitigation measures is to restrict HGV deliveries to the site to two a day within day time hours. Given this limitation

and context I do not consider that the noise and disturbance caused would have a significant or unacceptable adverse effect on the living conditions of the residents of No 2. Furthermore, I note that the mitigation measures proposed by the appellant were sufficient to allow the Council's Environmental Health Officer to withdraw his objection to the proposals. Compliance with the mitigation measures to protect the living conditions of neighbouring residents can be secured by the imposition of suitably worded conditions.

24. The other surrounding residential properties are sited further from the proposed servicing area and therefore it follows that the occupiers living conditions would not be unduly harmed.
25. For the reasons above I conclude that the proposal would not be harmful to the living conditions of occupiers of surrounding residential properties. Accordingly there would be no conflict with Policy GP2 of the LP which requires, amongst other things, that there is no significant adverse effect upon the residential amenity, of adjoining properties, by reason of the type and levels of activity on the site, or traffic generated.

### **Other matters**

26. Reference has been made to planning application 14/00823/FUL which was refused by the Council for a new dwelling at the rear of 5 and 7 Nottingham Road on highway safety grounds. However, the Council confirm in its Committee report that the reason for refusal related to substandard visibility of the proposed vehicular access. In this instance I have found that visibility would not be unduly compromised.
27. Concerns have been raised regarding the closure of the existing vehicle access from Mill Lane, which residents state is used as a shortcut to provide safe access from Mill Lane. However, I understand that this is an informal arrangement between the residents of Mill Lane and the owners of the car park. It is not a formal arrangement with the Local Highway Authority to improve highway safety. Furthermore the Highway Authority has not objected to the proposal in this respect.
28. The Wheatsheaf Inn is a grade II listed building. It is a two storey building sited at the back edge of the pavement. I have seen no evidence to suggest that the pub and the appeal site have any historical connection. The close relationship of the building to the road defines its limited and restricted setting within views along the highway. The proposed building would be set back in the site and therefore views towards the building would not be disrupted and consequently there would be no harmful impact on the setting and significance of the building in this respect.
29. I share the view of the Council's Conservation Officer that the use of the building as a pub contributes to its special historic significance. Therefore, I consider it necessary to impose a condition ensuring that there is no time restriction on the parking spaces available so as not to deter patrons of the pub parking in them.
30. There is a mix of building style, design and age in the area surrounding the appeal site. Predominantly buildings are red brick with pitched roofs and a degree of articulation to provide interest in the street scene. The proposed building would be set back in the site in line with the adjacent modern

bungalow. It would be single storey and of a similar height to surrounding buildings. It would also be constructed from brick with a pitched roof together with two gable features to the front elevation. Therefore, while a modern design and materials it would nevertheless reflect the character and appearance of the surrounding area. Any signage would be subject of a separate application to be considered by the Council.

### **Conditions**

31. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents. In the interests of clarity it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
32. Along with the conditions I have referred to in the main issues two conditions have been applied regarding access and parking in the interests of highway safety. Details of opening hours, the plant equipment and the demolition/construction process are required to protect the living conditions of neighbouring residents. The latter details need to be agreed prior to work commencing on site to ensure that appropriate techniques are used during the demolition/construction process to minimize impacts of noise, dust and vibration on neighbouring properties. I have amended the opening hours condition to ensure staff are able to access the property outside of the hours the store is open to the public.
33. A condition regarding the retention of existing trees and their protection is required in order to ensure that trees are protected during development and in the interest of the character and appearance of the area. The condition needs to be discharged prior to work commencing on site to ensure no trees are harmed during any of the development process.
34. I have not imposed the Council's suggested conditions regarding materials, landscaping or drainage as the details are included on the approved plans. I have therefore only imposed conditions requiring their implementation and retention. The appellant refers to the submitted lighting plan ref 6795/PY/A however the Council has not referenced this plan in their list of suggested approved plans. I have seen nothing to suggest that this plan has been assessed by the Council. Given the location of the proposal within a residential area the lighting levels should be considered to prevent any adverse impact on residents living conditions. I have therefore imposed this condition.

### **Conclusion**

35. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Zoe Raygen*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the plans ref. 4698-P00, 4698-P01 Rev.D, 4698-P02 Rev.C, 4698-P03 Rev.E, 4698-P05 Rev.B, 4698-P06 Rev.C, 4698-P07, 4698-P08 Rev.E, 4698-P09 Rev.C and 4698-P20 Rev.E.
- 3) Prior to the commencement of development, a method statement detailing techniques for the control of noise, dust and vibration during demolition and construction shall be submitted to and approved by the Local Planning Authority. The works shall be carried out in accordance with the approved method statement. If the use of a crusher is required, this should be sited as far as possible from nearby properties and be operated in accordance with its process permit.
- 4) No operations shall commence on site until the existing trees and/or hedges which are to be retained have been protected in accordance with BS5837, details to be submitted to and approved in writing by the local planning authority and that protection shall be retained for the duration of the construction period. No materials, machinery or vehicles are to be stored or temporary buildings erected within the perimeter of the fence, nor is any excavation work to be undertaken within the confines of the fence. No changes of ground level shall be made within the protected area.
- 5) Planting shall be carried out in accordance with the details on plan ref 4698-P01D in the first tree planting season following the substantial completion of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) No part of the development hereby permitted shall be brought into use until the parking, turning and servicing areas, including measures to prevent the unregulated discharge of surface water to the highway, are provided in accordance with the submitted plan ref. 4698-P01D. The parking, turning, servicing areas and measures for drainage shall be retained and kept available for their intended purposes at all times thereafter.
- 7) The mitigation measures outlined in the Acoustic Report ref.2641.13/1 dated 16 May 2016 shall be fully implemented prior to the use commencing on site and retained for the lifetime of the development, including:
  - a 3 metre noise barrier to the northern and eastern boundary (- as indicated in Figure 4);
  - an acoustic impact mat to cover the unloading area and trolley path to the service yard door (- as indicated in Figure 4);
  - provision of specialist insulated covers to be fitted to roll cages during unloading;
  - no reversing beep tone alerts to be installed on delivery vehicles; and
  - positioning of the Back of House door closer to the delivery unloading position (- as indicated in Figure 4).

- 8) Delivery and waste collection times shall be restricted to the following times, and no more than two HGVs per day shall deliver to the store during these hours:
- Monday - Saturday 0930 - 2000 hours  
Sunday/Bank Holidays 1000 - 1800 hours
- 9) The premises shall only be open to the general public between the hours of 0700 - 2300 Monday to Sunday including Bank Holidays.
- 10) Before the use is commenced, the noise levels for all externally mounted plant or equipment (e.g. refrigeration, air conditioning, ventilation and extraction plant and equipment), together with any internally mounted equipment which vents externally, shall be assessed in accordance with BS4142:2014 (Methods for rating and assessing industrial and commercial sound) and a report of this assessment shall be submitted to and approved in writing by the local planning authority. In accordance with the supporting noise assessment from Blue Tree Acoustics (Report Ref: 2641.13/1 dated the 16 May 2016), the combined BS4142 Rating Level shall not exceed 32dB during the night-time, or 36dB during the daytime. Any plant noise should have the appropriate adjustment for the characteristic features of the sound; in particular, this may require a tonal adjustment Kt to be applied. The report will need to make it clear that the plant/equipment is capable of operating without causing a noise impact on neighbouring properties. The plant/equipment shall be implemented in accordance with the findings of the approved assessment report prior to the use commencing on site and noise levels shall be retained as approved at all times.
- 11) Prior to the installation of any security lighting / floodlighting should be submitted to and approved in writing by the local planning authority together with a lux plot of the estimated illuminance. Thereafter, the lighting shall be installed and retained in accordance with the approved details/specification.
- 12) The car park shall be retained solely for use by the existing public house and the proposed retail unit hereby approved and shall not be subject to any time limited parking restrictions for patrons of the public house.