
Appeal Decision

Site visit made on 3 May 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 29 June 2017

Appeal Ref: APP/P4415/W/16/3168062

Land adjacent to 95 Sheffield Road, Rotherham S60 1DA

- 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 Mr K Sabir against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2014/1312, dated 10 September 2014, was refused by notice dated 14 October 2016.
 - The development proposed is single storey retail unit with ancillary car parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:-

- The effect of the proposed development on the character and quality of the area, with particular regard to context and location;
- Whether the proposed development is acceptable having regard to relevant policy concerning retail uses; and
- Whether the proposed development is acceptable having regard to relevant policy concerning flood risk.

Reasons

Background

3. The site is situated near the confluence of the rivers Don and Rother within a fork in the road on a main route into Rotherham crossing the latter water course from the M1 motorway and Centenary Way a short distance to the west. It is common ground that it is neither in nor adjacent to the Rotherham town centre for the purposes of the National Planning Policy Framework ('the Framework'). Existing uses include a restaurant, convenience store, car wash and mobile phone mast.
 4. The proposal subject to appeal has emerged from what I understand to be a protracted negotiation with the local planning authority and some claimed support in principle on an informal basis. Be that as it may, I take the appeal as I find it for determination on its merits in the light of the development plan and other relevant policy.
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Effect on character and quality of the area

5. The uninspiring and primarily industrial and commercial surroundings of the site are mitigated to a degree by vegetation associated with the rivers and highway landscaping in the vicinity; but the site itself, although entirely typical of the built environment hereabouts, is nevertheless prominent, by virtue of being a corner site just to the east of the bridge over the Rother and potentially high profile in terms of passers-by approaching the town.
6. The Council's Core Strategy, adopted in September 2014 in the context of Framework guidance, reflects that guidance in its policy CS28 concerning sustainable design. The Framework is unequivocal in emphasising the importance of high quality design, the promotion of which is one of its core principles, and clearly states, at paragraph 64 that... *"Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions."*
7. The proposed development is functional and efficient for its intended purpose but castigated by the Council as being "utilitarian" in appearance. Although the need to raise the floor levels above flood level and allow permeability by floodwater imposes some design constraints, such factors can potentially be turned to good effect through creative design with flair. Overall, in any event the proposed design is an unprepossessing continuation of the uninspiring and overtly functional approach that is the legacy of the industrial and commercial activities in the locality.
8. Although the term "gateway" site can be over-used, I do consider that the particular location of this site, especially in the light of the Council's aspirations to regenerate the wider area, does lend substantial weight to the Council's contention that the gateway function it claims for the immediate locality would, in effect, be undermined by the lack-lustre design approach adopted to a potentially high value building. The potential of the site to be redeveloped with significant positive impact would be wasted, in my view, and this would result in conflict with the intentions of both policy CS28 and the Framework. A modicum of improvement might be achieved by sensitive landscaping but this is essentially an urban development site that demands a strong and visually exciting design solution for the building itself.
9. Although the immediate context of the site is uninspiring, the location and consequent visual prominence of the site does present an opportunity to improve the character and quality of the area and the way it functions which would not be realised by the current proposal for its redevelopment.

Retail policy

10. Saved policies of the Unitary Development Plan that have been replaced by the adoption of the Council's Core Strategy are identified in Appendix B of the latter document. Policy EC5 of the UDP concerning mixed use areas is superseded by CS31. The appellant's reference to MU21 (Westgate) is therefore not relevant and for the purposes of the development plan it is the 'menu' of uses in the emerging Sites and Policies document that now carries weight, albeit not the full weight that would be merited following adoption. I have no evidence in any event that the current MU10 'menu' of acceptable uses for the area including the appeal site is likely to change so as to include retail.

11. Given that no main modification has been suggested in the context of the examination of the Sites and Policies document, it is reasonable to conclude that policy CS31 of the Core Strategy will in due course apply to this site through the application of a menu of uses which excludes retailing as detailed in respect of MU10 under the auspices of policy SP67 of the Sites and Policies Document. Considerable weight may therefore be accorded to the content of this emerging part of the development plan insofar as it is relevant to the proposed development at issue. Overall, it is clear that the retail development proposed is in conflict with the development plan as it now stands.
12. Framework policy in general aims to direct retailing, on a sequential basis, to town centres, edge of centre sites and only then to out of centre sites if the space cannot be reasonably accommodated, taking a flexible approach, in sequentially preferable locations. The appellant's submission regarding this matter is not convincing and ultimately founders on his determination to construct additional retail space on land he already owns to capture primarily car-borne trade. This is contrary to the spirit and purpose of Framework policy as set out in paragraphs 23 - 27.
13. The locally set threshold for impact assessments is 500 square metres, a threshold that the appellant could have met by virtue of a planning obligation to relinquish the existing retail space and thereby secure a limit to the resultant floorspace, following development, below that figure. No such obligation has been placed before me and therefore there is no basis for concluding that the impact assessment required by Framework policy, as locally interpreted through Core Strategy policy CS12, is not required. It follows that there is no basis for safely concluding that the proposed development would not have a harmful impact on the vitality and viability of the town centre.
14. For all the above reasons, I conclude that the proposed development is unacceptable in principle having regard to relevant retail policy as set out in the development plan and the Framework. Policies CS1, CS12 and CS13 of the Core Strategy combine to direct significant retail development to accessible, sustainable locations amongst which the Rotherham town centre is primary. No justification for departing from that clearly expressed strategy has been demonstrated in this instance.

Flood risk

15. Being within Zone 3 as defined by the Environment Agency, the appeal site is clearly at risk from flooding and, although the Environment Agency does not in this instance object, its stance relies on the flood risk sequential test of the Framework being adequately satisfied. The local means to address that is the Rotherham Regeneration Flood Risk Toolkit. This is a detailed study and a means to apply national concerns regarding flood risk to the specific circumstances of the area including development plan policy, notably policy CS25 of the Core Strategy.
16. I concur with the Council's view that the proposal, being retail, does not benefit from the exception to the requirement to conduct the test that certain employment uses might. Given the absence of an adequate demonstration that there are no sequentially preferable sites available for the proposed use, from a flood risk viewpoint, I conclude that the proposal is unacceptable having regard to the Framework, policy CS25 and the Rotherham Regeneration Flood Risk Toolkit.

Overall conclusion

17. For the above reasons, I conclude that the proposed development would conflict harmfully with the intentions of the development plan and national policy, as expressed in the Framework, in respect of each of the main issues I have identified. I have taken all other matters raised into account but none lead me to conclude that there are material considerations sufficient to outweigh the conflicts with policy identified. I therefore conclude that the appeal should be dismissed.

Keith Manning

Inspector