

Appeal Decision

Hearing held on 10 May 2017

Site visits made on 10 May 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 12 July 2017

Appeal Ref: APP/L3245/W/16/3155518 Weston Road, Oswestry, Shropshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Derrick Dulson of Knotwood Investments Ltd. against Shropshire Council.
 - The application Ref 15/03676/FUL is dated 20 August 2015.
 - The development proposed is erection of garden centre and ancillary site works.
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Decision

1. The appeal is allowed and planning permission is granted for erection of garden centre and ancillary site works at Weston Road, Oswestry, Shropshire in accordance with the terms of the application, Ref 15/03676/FUL, dated 20 August 2015, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The Council did not determine the application on the basis that it was in receipt of a holding objection from Highways England. It has confirmed that all other planning matters are resolved and therefore it will be deferring to evidence from its statutory consultee on highway safety matters.

Main Issue

3. The main issue in this case is the effect of the proposed development on highway safety on the strategic road network, with particular reference to the junction of the A483(T) trunk road with Maesbury Road.

Reasons

Background and policy context

4. The appeal site comprises a field of approximately 2.25 hectares adjacent to the junction of Maesbury Road with the A483(T). Bounded on all sides by mature hedging and trees, the site has a bell mouth access onto Maesbury Road. This was constructed pursuant to an earlier planning permission, but I note that it is in a similar position to the Weston Road diversion being sought as part of the appeal scheme.
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5. The land is identified as a committed urban employment site under Schedule 14.1c of Policy S14 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan (2015). This is in recognition of the fact that it was allocated in an earlier local plan dating back to 2006 and subsequent outline planning permissions granted for industrial development.
6. There is disagreement between the parties as to whether there is a policy requirement for upgrades to highway infrastructure prior to development of the appeal site taking place. Unlike for allocated sites where the need for access or junction improvements is made explicit, the employment commitments are listed without any commentary. Moreover, the cross reference to Policy MD8 of the SAMDev which deals with infrastructure provision is missing. Whether intentional or not, this suggests that infrastructure requirements for the committed sites have already been addressed.
7. That is not to say that Policy MD8 of the SAMDev is not relevant, as this is a fresh application which needs to comply with the development plan as a whole. The policy states that development should only take place where there is sufficient existing infrastructure capacity or where the development includes measures to address a specific capacity shortfall which it has created or which is identified in the LDF Implementation Plan or Oswestry Place Plan.
8. Both of the above documents list improvements to the A483/Maesbury Road junction as *priority infrastructure*. Placed into context, this falls one category below *critical infrastructure* which is defined as 'the essentials without which development cannot take place, including safe access'. Community Infrastructure Levy is identified as a potential source of funding, but there is no reference to S106 developer contributions as a mechanism for securing the infrastructure.
9. The appellant draws my attention to Highways England correspondence in relation to the site's inclusion in the SAMDev. This makes no reference to an extant highway safety issue. Highways England explained at the hearing that the works were already included in an earlier Implementation Plan and therefore there was no need to raise the matter again. However, I find this argument unconvincing. Given the emphasis now being placed on the need for safety improvements as a prerequisite for development of the appeal site, I would have expected the matter to have been given some attention in the relevant consultation responses. Additionally, the infrastructure upgrades should have been given 'critical infrastructure' status if the intention was to ensure that development of the appeal site does not go ahead without them.
10. On balance, having regard to all of the above, I am not persuaded that there is a firm policy intention to make development of the appeal site dependent upon junction improvements being carried out.

Planning history and consideration of fallback position

11. Highways England challenges the other parties' assertion that there is an extant permission for industrial development on the site. It is not for me to reach a definitive finding on the issue of lawfulness in the context of a S78 appeal. To my mind, whether or not there is a fallback position is not

decisive in this case. Of greater relevance is the fact that planning permission has been granted on successive occasions for industrial development on the land, without any specific infrastructure requirements and with no limits over the quantum of employment floorspace. I attach this factor substantial weight.

Analysis of junction safety record and collision data

12. Historically, the junction of the A483(T) with Maesbury Road has a poor safety record, with a high number of reported collisions. Data shows that there were 47 collisions over the 17 years between 1998 and 2015. This can be broken down into 4 fatal accidents, 8 involving serious injuries and 35 slight.
13. In the opinion of Highways England, collisions are not necessarily linked with visibility or capacity, but something more inherent about the layout which makes it confusing to road users. Although a study in 2013 identified the complex arrangement of priority junctions with the central reservation as being the most likely cause of collisions in this location, the layout is not substantively different to that shown in the Design Manual for Roads and Bridges. This suggests to me that it is not intrinsically unsafe.
14. In December 2012 the speed limit on the A483(T) in the vicinity of the appeal site was reduced to 50mph. The most up-to-date collision statistics show that there has been a substantial drop in accident rates from 2.4 per annum over the period 2006-2012 to 1.25 per annum since the speed limit reduction. Moreover, there have been no fatal or serious injuries in the 4 year period from 2013 to 2016. This represents a significant improvement in safety.
15. Although the latest statistics are awaiting validation by the Department for Transport (DfT) there is no compelling evidence to suggest that they are inaccurate. I have therefore attached them considerable weight. Whilst noting the long term safety record, it seems to me that the most relevant data for the purposes of my assessment is that which relates to the period following the speed limit reduction. This reflects the current status quo in terms of highway conditions.
16. Highways England sought to argue at the hearing that the accident rate is still too high and that safety should be assessed in absolute terms. I do not disagree with the latter statement. However, based on the most recent data on accident frequency and severity it must be questionable whether the junction would feature in any future updated Trunk Road Cluster Site List.
17. That is not to say that the junction is necessarily as safe as it could be. Clearly collisions are still occurring. But I give significant weight to the fact that the frequency of these events is considerably lower than predicted using Cost Benefit Analysis (COBA) calculations. Although this tool is more typically used for the economic assessment of road schemes, it remains relevant. It is also demonstrative of the reality that collisions can occur at all junctions, regardless of whether or not they have been appropriately designed.

The effect of the development itself on highway safety

18. Highways England advised at the hearing that its concerns relate solely to safety. Contrary to its previous stance, there was no suggestion that the appeal scheme would lead to capacity issues at the junction. Paragraph 10 of DfT Circular

02/2013¹ emphasises that even where proposals would not result in capacity issues, the prime consideration will be the continued safe operation of the strategic road network. This is acknowledged by all parties.

19. The appellant has carried out junction modelling using PICADY. This exercise provides two specific capacity-related outputs: queue lengths and ratio of flow to capacity (RFC) quotients. It seems to me that neither measure is particularly useful for assessing the effect of the proposal on highway safety.
20. Notwithstanding this, a number of the assumptions used in the modelling have been challenged. There is particular concern that the trip generation figures are under-estimated. It is contended that the TRICS² sites used in the assessment are not comparable to the appeal scheme on the basis that they have fewer car parking spaces. In the opinion of Highways England, the level of parking being proposed is suggestive of the number of trips exceeding those generated by a traditional garden centre. However, empirical evidence presented by the appellant from two other garden centres casts substantial doubt on this.
21. I am further persuaded by the argument, advanced at the hearing, that customers are attracted by the retail offer (expressed by the quantum of floorspace) as opposed to the level of car parking available. In my view, inadequate parking can act to constrain customer numbers, but excess provision does not automatically have the opposite effect. Furthermore, whereas many garden centres operate overflow car parking to cater for Bank Holidays and other peak trading periods, the proposal here is to integrate that provision into the main car park. In my opinion, the outcome would be no different to another garden centre with occasional overflow parking on adjacent land.
22. Having regard to the evidence before me, I consider that the appellant's forecasts of trip generation are robust and a reasonable basis on which to assess the proposal. Highways England contends that, even in the event of these numbers being accepted, the proposal would amount to a significant increase in turning movements at the Maesbury Road junction. It is put to me that this would exacerbate the extant safety issues, such that mitigation would be required to make the scheme acceptable.
23. Although the net number of turning movements would increase, the pattern of garden centre usage means that the additional comings and goings would be spread out throughout the day, with peak activity at weekends. Highways England states that the majority of collisions at this location occur during the weekday inter-peak when the garden centre would be attracting most visitors. However, this analysis is flawed as it relies partly upon data collected prior to the speed limit reduction on the A483(T). Of the five collisions that took place over the period 2013-2016, only two occurred during the weekday inter-peak of 0900 to 1600 and only three during times when the proposed garden centre is likely to be open for business. None of the incidents involved fatalities or serious injuries – all casualties were categorised as having slight injuries.
24. Whilst any injury accident is regrettable, it is unrealistic to expect any junction to have a perfect safety record. In my view, the frequency and severity of collisions is not significant as a proportion of the overall number of vehicles passing through the junction. Having regard to the likely pattern of activity at

¹ The Strategic Road Network and the Delivery of Sustainable Development, Department for Transport

² Trip Rate Information Computer System

the proposed garden centre, and also the fact that the junction would continue to operate within capacity, I do not consider that the proposal would have a significant adverse effect on highway safety at the Maesbury Road junction, or on the strategic road network.

25. As such, there would be no conflict with Policies CS6 and CS7 of the Shropshire Local Development Framework: Adopted Core Strategy (2011) and Policies MD2 and MD8 of the SAMDev. These policies seek to ensure, amongst other things, that development only takes place where there is sufficient infrastructure capacity and where it does not comprise the requirement to maintain safe and reliable transport infrastructure.
26. The National Planning Policy Framework (the Framework) and DfT Circular 02/2013 both state that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Given my findings above, it follows that there would be no conflict with this aspect of national policy.

Other Matters

27. Residents of nearby Weston have expressed concerns regarding the effects of traffic and the potential for their hamlet to be used as a rat run. It is evident that this is a pre-existing problem and one which has already been identified, with consideration being given to speed limit reductions and potential weight restrictions. Whilst the appeal scheme may result in some increase in traffic through Weston, this is unlikely to be the primary means of access and only a small proportion of garden centre customers would use this route. The majority of movements would occur off-peak. Having regard to this, and the powers available to the Highway Authority for addressing the community's extant concerns, this matter would not constitute a reason to dismiss the appeal.
28. Concerns have also been raised regarding the proximity of Weston Road in its diverted form to the junction of the A483(T) with Maesbury Road and also the proposal for a section of car park to the north of Weston Road. The Highway Authority representative confirmed at the hearing that he had no issue with either aspect of the scheme's design. In my view there would be sufficient visibility for drivers and pedestrians and consequently this aspect of the scheme would not create an unacceptable safety risk.
29. At the hearing the owner of a small nursery business questioned the need for the proposed garden centre and raised fears regarding the effect on his family's livelihood. Whilst I am sympathetic to such concerns, it is not the role of the planning system to prevent competition. Moreover, there is no need test contained within national or local policy. It is legitimate to seek to protect the vitality and vibrancy of Oswestry town centre, but on the evidence presented I am satisfied that the proposal would not result in a harmful diversion of trade. Accordingly, there would be no significant adverse impact on the town centre and no conflict with Policy MD10b of the SAMDev.
30. I have noted the representation regarding the loss of employment land. However, the appeal site constitutes only a small proportion (less than 5%) of the total employment land identified for Oswestry within the SAMDev. I therefore concur with the Council's assessment that the release of the site for an alternative use would not undermine strategic policy objectives. Indeed, the

proposal would create a large number of jobs which would benefit the local area. This factor carries considerable weight in favour of the proposal.

Conditions

31. The parties have suggested various conditions in the event that I am minded to allow the appeal. These were discussed at the hearing. I have considered each against the six tests set out in paragraph 206 of the Framework and advice within the Planning Practice Guidance. Where necessary I have adjusted the wording to improve precision and enforceability.
32. In addition to the standard commencement condition, it is necessary to attach a condition to define the plans with which the scheme shall accord. This will provide certainty regarding the scope of the permission. Conditions are also required to secure details and samples of external materials for the building and the implementation of the approved landscaping scheme, in the interests of the character and appearance of the area.
33. I have attached pre-commencement conditions to secure a Construction Method Statement and other details relating to the construction phase, including in respect of construction access arrangements, the diversion of Weston Road and measures for the protection of ecology on the site. This information is required in the interests of highway safety and biodiversity protection.
34. For reasons of highway safety and to ensure satisfactory access to the site, conditions are also necessary to require the submission of engineering details for all new roads, footways and accesses and to ensure the proper surfacing of the deliveries yard and parking, turning and circulatory areas prior to opening of the garden centre. A condition securing a Travel Plan is also justified to minimise the use of the private car and promote sustainable travel modes.
35. Lighting has the potential to affect highway safety on the adjacent trunk road and also cause disturbance to bats. To prevent such adverse impacts, I have imposed a condition requiring the local planning authority's prior written approval for all external lighting. A condition is also necessary to secure details of surface water drainage to prevent flooding.
36. I agree with the parties that a condition to restrict the scope of the retail use, in terms of goods sold and services provided, is necessary to minimise the impact upon Oswestry Town Centre. With minor modifications agreed at the hearing, I have no objection to the suggested wording which I am told is based upon that previously used for garden centres elsewhere in the county.
37. Further conditions have been suggested in relation to ecological enhancement and the provision of adequate access and facilities for disabled persons. Planning permission could not be refused in the absence of these conditions, not least because disabled access is addressed under the Building Regulations. It therefore follows that such conditions are unnecessary.
38. Likewise, I do not consider it necessary to impose a condition requiring the submission of an application under S247 of the Act in relation to the stopping up and diversion of Weston Road. A timetable and programme for these works is already secured by another condition.
39. Highways England has requested a number of conditions to require the submission of a further Transport Assessment and highway mitigation in line

with its findings. However, this would be revisiting matters already dealt with under this appeal. Given my conclusions on the main issue I consider these conditions to be unnecessary.

Conclusion

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

Robert Parker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Giles Cannock of Counsel	Instructed by Jane Gunnion of Rees-Roberts Solicitors
Andy Brookfield	Transport Planning Director, Capita
Robert Davies	R F Davies Architectural Services (Agent)
Edward Landor	Edward Landor Associates (Planning consultant)

FOR THE LOCAL PLANNING AUTHORITY:

Tim Rogers	Area Planning Manager
Philip Mullineux	Principal Planning Officer
Edward West MRTPI	Principal Planning Officer, Local Plans Team
Mark Wootton	Area Manager, Highways Development Control
Cllr Vince Hunt	Divisional member for Oswestry West

FOR HIGHWAYS ENGLAND:

Patrick Thomas	Asset Manager
Lee White	SYSTRA, advisors to Highways England
Fran Rowley	Turley, advisors to Highways England
James Carroll	Kier, advisors to Highways England

INTERESTED PARTIES:

Thelma Parker-Shimell	Representing residents of Weston
Edward Jones	Local business owner

DOCUMENTS SUBMITTED AT THE HEARING

1. Design & Access Statement & Planning Statement
2. Extracts from the SAMDev – p.8-14 and Policy S14
3. Place Plan for Oswestry & surrounding area 2015-16
4. Shropshire's Implementation Plan 2016-2017
5. Decision notices and plans for the following planning applications:
Refs. OS/07/15105/OUT, 11/04447/REM, 12/04101/OUT and 15/04944/REM
6. Extract from Design Manual for Roads and Bridges (Volume 6 Section 2 Part 6 TD42/95, page 7/12)
7. Accident data broken down into 2006-2012 and 2013-2016
8. Annotated map showing commentary for accidents between 2013 and 2016
9. HOW Planning, Response to Retail Comments

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Proposed Soft Landscape Plan, Drawing no 1075:2 (Site layout) and Drawing no. 1075:3 (Floor plans/elevations).
- 3) No development shall take place until details and samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place, including works of site clearance, until the following details have been submitted to and approved in writing by the local planning authority:
 - a) a timetable and programme for the diversion of Weston Road;
 - b) details of the means by which vehicular access into the site will be provided during the construction phase; and
 - c) details of the measures to be undertaken during site clearance and development to ensure the protection of nesting birds and ecology on the site, in line with the recommendations of the Pearce Environment Ltd Phase 1 Habitat Survey and Protected Species Scoping Report dated October 2012 and Pearce Environment Ltd Ecological Appraisal dated June 2016.

Development shall be carried out in accordance with the approved details.

- 5) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority following consultation with the highways authority for the A438(T) trunk road. The approved Method Statement, which shall be adhered to throughout the construction period, shall include details of:
 - a) the parking of vehicles of site operatives and visitors
 - b) loading and unloading of plant and materials
 - c) storage of plant and materials used in constructing the development
 - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - e) wheel washing facilities and other measures to prevent mud transfer onto the public highway
 - f) measures to control the emission of dust and dirt during construction
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works
 - h) a Traffic Management Plan and HGV Routing Plan
 - i) access and circulation of vehicles
 - j) temporary external lighting during the construction phase

- 6) No development shall take place until a scheme of surface water drainage has been submitted to and approved in writing by the local planning authority, in consultation with the highways authority for the A483(T) trunk road. The design of the scheme shall be based upon the principles of a sustainable drainage system and ensure no run off into the A483(T) highways drainage system. The submitted details shall incorporate a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements necessary to secure the operation of the scheme throughout its lifetime. The approved scheme shall be implemented in full prior to the development being first brought into use and retained thereafter.
- 7) No development shall take place until engineering drawings for all new roads, footways and accesses, including details of visibility splays and drainage, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in full accordance with the approved details prior to the garden centre being opened to customers. The areas within the visibility splays (such splays to be identified on a plan as part of the information submitted pursuant to this condition) shall be kept permanently clear of all obstructions for the lifetime of the development.
- 8) The garden centre hereby permitted shall not begin trading until the deliveries yard and parking, turning and circulatory areas shown on the approved plans have been laid out and properly surfaced in accordance with details which have been first submitted to and approved in writing by local planning authority. The areas shall thereafter be kept clear and maintained at all times for their designated purpose.
- 9) The garden centre hereby permitted shall not begin trading until a site specific Travel Plan has been submitted to and approved in writing by the local planning authority, following consultation with the highways authority for the A438(T) and A5(T) trunk roads. The Travel Plan measures shall relate to the operation of the development. The approved Travel Plan, which shall include provision for periodic monitoring and review, shall come into operation on occupation of the development and be adhered to throughout the lifetime of the development.
- 10) Prior to the installation of external lighting on the site a lighting plan and details of the type, orientation and luminance levels of each light fitting shall be submitted to and approved in writing by the local planning authority, following consultation with the highways authority for the A438(T) trunk road. The lighting shall be installed in accordance with the approved details and thereafter retained for the lifetime of the development.
- 11) The approved landscaping scheme shall be implemented in the first planting season (October to March) following the completion or first occupation of the development, whichever is sooner. Any trees or plants which, within a period of five years of planting, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.

- 12) The retailing of products and the offering of services from the garden centre development hereby permitted shall be limited to the goods, products and services listed below:
- 1) Fruit, vegetables and flowers
 - 2) All types of plants
 - 3) Seeds and bulbs
 - 4) Growing media, peats, composts and barks
 - 5) Fertilizers and chemicals
 - 6) Lawn care products
 - 7) Gardening tools and equipment
 - 8) Plant containers, garden ornaments and vases
 - 9) Garden related books
 - 10) Garden games
 - 11) Aquatic gardens, garden pools and accessories
 - 12) Floral art
 - 13) Gardening clothes
 - 14) Conservatory furniture, garden furniture and barbecues
 - 15) Garden machinery and services
 - 16) Garden related art and craft products
 - 17) Greenhouses, garden sheds
 - 18) Construction materials and equipment necessary for the construction of patios, garden paths, decorative walling, pergolas
 - 19) Refreshments, confectionery, ice cream and light snacks (including the provision of a Cafeteria)
 - 20) Landscaping services
 - 21) Pets corner and children's playground
 - 22) Exhibitions related to the approved product list
 - 23) Videos, CDs, DVDs magazines and tapes related to the products identified in lists 1, 2 and 3 of this document
 - 24) Swimming pools and hot tubs, and pool care products and accessories
 - 25) Greenhouse and conservatory heaters and fuel
 - 26) Conservatories, carports and replacement windows
 - 27) Fish, reptiles, aquatic and vivarium sundries and food
 - 28) Pets, pet care, pet accessories and food
 - 29) Garden and plant lighting
 - 30) Gardening products used in connection with the establishment and maintenance of gardens and allotments
 - 31) Home care and home improvement

32) Eco products

In addition to the products listed above, the following goods may be sold from up to a maximum of 500 square metres of the garden centre hereby approved:

- 1) Christmas and other seasonal decorations
- 2) Stationary, cards and gift-wrap for all occasions
- 3) Pictures, frames, photograph albums, film and digital memory cards for cameras
- 4) Candles, candlesticks and accessories
- 5) Picnic ware, tableware and kitchenware
- 6) Ceramics, china, glass, ornaments, cork, copper and brassware, stones and shells
- 7) Books including non-fiction, fiction, children's books, calendars and diaries
- 8) Soft and mechanical toys and batteries
- 9) Garden and outdoor toys, games and sports equipment
- 10) Arts and craft hobby products including needle-ware and tapestries
- 11) Outdoor clothing and footwear
- 12) Bakery and dairy products health and wholefood, health preparations and toiletries, grocery and delicatessen products (fresh, dried, tinned and frozen)
- 13) Camping equipment