



Appeal Decisions

Site visit made on 20 June 2017

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 27 July 2017

Appeal A - Appeal Ref: APP/A1910/W/17/3168407 499 London Road, Hemel Hempstead HP3 9BG

- 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 outline planning permission.
 - The appeal is made by Mr Shamir Budhdeo against Dacorum Borough Council.
 - The application Ref 4/02899/16/MOA, is dated 24 October 2016.
 - The development proposed is demolition of existing retail showroom, workshop and associated facilities and construction of offices with retail and lobby areas (all matters reserved).
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Appeal B - Appeal Ref: APP/A1910/W/17/3171292 499 London Road, Hemel Hempstead HP3 9BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Shamir Budhdeo against Dacorum Borough Council.
 - The application Ref 4/03073/16/MOA, dated 10 November 2016, was refused by notice dated 7 February 2017.
 - The development proposed is demolition of existing retail showroom, workshop and associated facilities and construction of offices with retail and lobby areas, cafeteria and integrated basement parking (all matters reserved).
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Decision

1. Both appeals are dismissed.

Application for costs

2. An application for costs was made by Mr Shamir Budhdeo against Dacorum Borough Council in respect of Appeal B. This application is the subject of a separate Decision.**Procedural Matters**
3. For clarity and brevity I have used the description of development given on the decision notices in the heading above.
4. As set out above, there are two appeals on this site. Appeal A relates to the construction of offices, retail and on-site parking and Appeal B is for offices, retail, cafeteria and a part-subterranean car park block. I have considered each proposal on its individual merits. However, as the two applications are complementary, although different in scale and content, I have dealt with them together to avoid duplication except where otherwise indicated.
5. Appeal A results from the Council's failure to determine the planning application within the statutory period. A decision was issued by the Council

after the expiry of the determination period. This recommended refusal and identified two areas of concern, namely the effect of the development on the vitality and viability of the town centre, and concerns raised by the Hertfordshire County Council (HCC) in respect of highways issues. On the basis of the evidence before me I see no reason to disagree with those concerns and those same issues are given as reasons for refusal for Appeal B. However, having reviewed the submissions from interested parties I consider it appropriate to include also as a main issue, the effect of the development on the character and appearance of the area.

6. Whilst illustrative plans have been submitted, I consider these to be indicative only. They do however give an indication of the scale and spread of development for each appeal.
7. The evidence submitted for Appeal B includes the appellant's submission in relation to the vitality and viability of the town centre. This is relevant to both appeals.
8. The submitted correspondence indicates that an updated Transport Assessment was submitted to HCC during the determination period for Appeal A. Although this was requested during the appeal it was not supplied. Consequently I have used the assessment dated September 2016 in my reasoning for Appeal A.
9. The appellant submitted a Technical Note¹ in relation to the transport assessment for Appeal B in March 2017. The Council's submission of evidence does not indicate that this has been taken into account. However, the Council has been given an opportunity to confirm that a copy was received and in the absence of any clarification on this, I have concluded that it should be taken into account in my reasoning.

Main Issues

10. The main issues are the effects of the development on:
 - The vitality and viability of Hemel Hempstead town centre;
 - The safe and efficient operation of the highway; and,
 - The effect of the development on the character and appearance of the area.

Reasons

Policy background- both appeals

11. The appellant's evidence refers to the Hemel Hempstead Town Centre Masterplan² (Masterplan). However, the outer edge of the defined study area is about 1 kilometre from the appeal site. As such, the site is not in the town centre and the Masterplan is not of relevance to these appeals.
12. The evidence also draws upon the emerging Two Waters Masterplan³ (TWM). Although this includes the appeal site, it is an emerging plan, without Development Plan status, and is still in a final consultation phase. As such, although I have reviewed its contents, it carries only limited weight.

¹ Vectio Consulting Ltd, March 2017

² Hemel Hempstead Town Centre Masterplan, adopted January 2013

³ Two Waters Strategic Framework, Final Report, November 2015

13. The appellant argues that where there is conflict between the National Planning Policy Framework (the Framework) and the Development Plan, the Framework must prevail⁴. However, the Planning and Compulsory Purchase Act 2004, s38(6) states that if regard is to be had to the development plan for the purpose of the planning Acts, the determination must be in accordance with the plan, unless material considerations indicate otherwise. There is nothing in the evidence before me to indicate that the Development Plan policies should not be given full weight, particularly as the Core Strategy⁵ (CS), which forms part of the Development Plan, was adopted subsequent to the Framework.
14. The memorandum from Strategic Planning outlines the current position of the Council's policies, to which I give full weight, and their relevance to these appeals. Current policies identify the area as residential and insofar as the TWM is a material consideration, this supports a shift from employment to residential use in this area. However, the Council considers some office development on the appeal site would be acceptable and the reasons for refusal do not include the proposed office use.
15. I can see no inconsistency in the approach adopted by the Council in their decision making, or non-compliance with national policies. I appreciate the appellant's concerns with regard to the current uncertainty regarding the regeneration of the station area but this does not alter my reasoning for these appeals.

Viability Study – both appeals

16. The appeal site is an L-shaped plot with a frontage on London Road and a rear strip of land running between the station car park, and the rear gardens of dwellings fronting London Road to the north. The site currently houses a car showroom and workshop, which face the road. There is extensive parking to the rear and the train station is located about 150 metres from the site.
17. London Road is a busy distributor road running alongside Boxmoor which is a significant strip of informal open space which snakes into the town centre alongside the Grand Union Canal. Development on both sides of Boxmoor is generally low rise and associated with stands of mature trees which make a pleasing setting for this main approach into Hemel Hempstead.
18. The development for both appeals would include a convenience food store such as Tesco Metro, Waitrose or Lidl⁶. The Council considered a Sequential Test and Retail Impact Assessment (Sequential Test) was required to assist the determination of both applications.
19. CS Policy CS16 states that new retail development will be assessed in terms of its location, scale and impact, and it will be permitted if it conforms to the sequential approach. Outside defined areas, such as the appeal site, development will only be permitted if the proposal complies with the sequential approach and demonstrates a positive outcome in terms of the impact assessment. The area of the appeal site is identified in the CS as an out-of-centre retail location and significant new retail development or changes to the type of goods that are currently sold, which in this case are identified as bulky non-food goods, will not be allowed.

⁴ Email 9 December 2016

⁵ Dacorum Borough Council, Core Strategy, adopted September 2013

⁶ Design and Access Statements

20. CS Policy CS16 is supported by Paragraph 24 of the Framework, which states that sequential tests are required for town centre uses that are not in an existing centre and not in accordance with an up-to-date plan. Those criteria apply in this instance.
21. The appellant has submitted advice which states that the Sequential Test is not required⁷. This argues that guidance in the Framework recommends a flexible approach to decision making. However, there is nothing in the evidence before me to indicate that the Council would dismiss out-of-centre development where the Sequential Test demonstrates a positive outcome. The advice refers to the TWM, but as noted above, this carries limited weight at this time.
22. In any case, the Council's strategic planning advice considered the retail proposal in the context of the development plan as well as the emerging Site Allocations and TWM. This confirms that longer term development for the station area is likely to demand a convenience store, but concerns are raised that this retail development has not been justified by a sequential assessment, would probably be larger than needed to serve local residents and commuters, and would not overlook the station forecourt. Moreover, this advice also concludes that the scale and location of future retail development for the station site has not yet been established.
23. The appellant argues that the food outlet proposed is *not retail development as detailed in the Local Plan*⁸. However, there is no supporting evidence to clarify this statement and consequently I give this argument little weight. Furthermore, I disagree with the appellant's argument that the existing sui generis use of the car showroom is in any way a consideration to weigh in favour of a convenience store on this site, as the two would be likely to attract a diverse customer base and traffic pattern. Moreover, the car showroom conforms to the retail profile identified in CS Policy CS16.
24. I appreciate that the retail unit proposed in each appeal would be relatively modest. However, the site's position on a main distributor road and its proximity to the station would be highly likely to result in a customer profile based primarily on commuter traffic, and as such it is unrealistic to state that the shops would service a local catchment. The appellant argues that better accessibility to the station could be discussed but I have to determine the appeal before me.
25. I am also concerned that the shops, with a national supermarket as a tenant, would be sufficiently attractive to displace significant retail activity from elsewhere in the town, including the Aldi supermarket, also located on London Road towards the town centre. I appreciate the wider benefits advanced as arguments to support the retail outlet, but it remains that these arguments are neither supported by objective evidence nor current policy.
26. In the light of the above, I conclude that there is insufficient evidence to enable me to conclude that the development for both appeals would not have an adverse effect on the viability and vitality of retail outlets in other locations, including the town centre. This would be contrary to CS Policy CS16 as outlined above, as well as Saved Policy 44 of the Local Plan⁹ (LP) which

⁷ Enabling Projects, 25 January 2017

⁸ Email to Council 9 December 2016

⁹ Dacorum Borough Local Plan, adopted April 2004

requires a sequential approach to site selection in order to demonstrate need for development and ensure it would not damage the vitality of viability of nearby town or local centres. The development would also be contrary to the more general policy CS Policy CS1 which requires development to enhance the vitality of the town centre and CS Policy CS4 which guides development to appropriate areas within settlements, as well as the guidance given in the Framework. Saved LP Policy 42 is concerned with shopping centres in town centres so is not of relevance here.

Highway infrastructure and safety – both appeals

27. The existing site plan indicates there are 63 parking bays and 37 double parked spaces in front of the showroom at the site. The parking bays were full when I visited and the number of parked vehicles appeared excessive for the scale of operations on the site, particularly as the application form states that there are 8 full time employees. I am not satisfied that all the parked vehicles belong to customers or employees and there is no evidence before me to indicate where these additional vehicles originate or why they are parked on the site.
28. Furthermore, the evidence before me indicates that the existing trip baseline was generated from TRICs base data, and was predicated upon the floor area of the existing buildings. The transport assessment confirms that based on TRICs data, 23 parking bays are needed for current site operations. I conclude that either the TRICs data used is not wholly representative of the baseline situation or that an appreciable proportion of the existing site parking is used by people not working on or visiting the site. As such, I conclude it is likely that both developments would cause the displacement of a proportion of these vehicles to the surrounding roads. This would add to parking stress on nearby roads which have limited on-street parking with significant permit only restrictions.

Highway infrastructure and safety – Appeal A

29. The transport assessment¹⁰ appears to be have been prepared for a different application. It states that the car showroom element of the appeal site is to be retained. Consequently, the report does not consider the impact of the proposed retail outlet when modelling parking demand or trip generation. This leads me to conclude that the predictions are incomplete and likely to significantly underestimate the effect of the development on local traffic volume or parking requirements within the site. Given the site's location I consider the retail unit would be likely to generate significant short-term parking, particularly at peak hours and would have a pattern of deliveries that was not necessarily comparable to that of the existing site uses.

Highway infrastructure and safety – Appeal B

30. The assessment's trip generation¹¹ and parking requirements are based on the inclusion of a non-food retail outlet. This is counter to the evidence in the design and access statements as well as the indicative internal and external images. The transport consultant states those references to a food store are inaccurate and that in any case the use of the shop could be controlled by condition. However, neither party has suggested such a condition. Furthermore, HCC's objections make it clear that it is the omission of food

¹⁰ Vectio Consulting, September 2016

¹¹ Vectio Consulting, December 2016

retail modelling data that forms the main basis of their concerns and this has not been addressed or clarified by the appellant in the statement of case. Consequently, I conclude that the development would include a food store and the transport modelling and assessments, based on non-food retail, are of limited value to my reasoning.

31. As such, the evidence provided in respect of mitigation works to the local infrastructure and multi-modal modelling is insufficient to enable me to conclude that there would not be adverse effects on the highway network.
32. HCC has also raised concerns in respect of the café. Traffic generation has not been attributed to the café as it is considered that this would be primarily used by the site occupants, even though it has been used to generate parking requirements. However, notwithstanding that I have some doubts that the proposed office space could support a cafe of the size proposed, I accept the appellant's argument¹² which states that its parking could be allocated to general office use without exceeding the parking thresholds. However, the future use of the café is a material consideration in respect of trip generation and in combination with a food retail outlet on the same site and in the context of a busy distributor road, does require adequate assessment at outline stage.
33. Although the transport scoping report agreed with HCC that multi-modal evaluation of the development would be undertaken, the original assessment contained only descriptive information of the local pedestrian and cycle environment, as well as public transport schedules. Trip prediction was solely related to vehicles. However, this information has now been updated. On this basis and taking into account the site's out of town location, I am satisfied that the development would not have an adverse effect on the highway network in this regard.
34. HCC has also raised a concern in respect of swept path analyses. There are plans within the assessment for the site entrance, which in any case already caters for large vehicles. With regard to internal movement, ordinarily I would consider this a matter to be dealt with under reserved matters, but given the likely scale and spread of development, and lack of consideration of a food store on the site, I am concerned that there would be limited areas available within the site for service access and turning. At peak hours queuing vehicles for the APS might conflict with service vehicles, particularly adjacent to the cafeteria which will need its own service area. Consequently, I am not satisfied that adequate turning and parking areas would necessarily be available within the site.
35. The assessment also states that there would be relatively low levels of construction traffic but given the extent of excavations required to excavate two storeys of subterranean car park, I give this argument limited weight.
36. The original assessment included publicly available accident data over a period of three years, which HCC considered was insufficient history and not necessarily official data. However, I am satisfied that this data, now updated, originates from the Department of Transport and the police, and I see no reason to conclude that it is inaccurate or incomplete. In any case, the existing access has reasonably good visibility and there is a pedestrian refuge on London Road nearby. There is nothing in the evidence before me to indicate

¹² Technical Note, March 2017

that there are specific or serious safety issues relating to the current site access which might be aggravated by higher traffic volumes, and this has not been determinative to my reasoning.

37. HCC also argued that there could be a tailback from the APS unit onto the footway at peak times. However, this conclusion was reached on the basis of a 5.85 metre vehicle length which is significantly longer than a standard parking bay. As it is likely vehicles would queue in close formation, I give this argument little weight.

Highway infrastructure and safety – both appeals

38. In the light of the above, I conclude that neither appeal properly considers effect of a food outlet on the site and that therefore there is insufficient information to enable me to conclude that the developments would not have an adverse effect on the local highway network in terms of safety and efficiency of operation.
39. With regard to office use, there is a valid fall-back scheme which allows the existing buildings to be converted to office use. However, although this weighs in favour of the development it does not allay my concerns in respect of the lack of information with regard to the proposed retail outlet.
40. As such, the development for both appeals would be contrary to Saved LP Policy 51 which requires development to be assessed against the highway criteria listed. It would also be contrary to CS Policy CS9 which requires the traffic generated from new development to be compatible with factors affecting the current and future operation of the road network, and CS Policy CS12 which requires development to provide safe and satisfactory means of access for all users and sufficient space for parking and servicing. The Council has cited CS Policies CS2 and CS8 but these are more general policies, which are of lesser relevance than those I have referred to.

Character and appearance – both appeals

41. The indicative designs for Appeal B show that there would be a considerable spread of development across the site, with the APS car park hard against three boundaries at the site's eastern extent of the site. I conclude that there would be a significant increase in built form compared to what is there now. The combination of the elevated site and spread of development would result in it being visible above and behind the modest two-storey dwellings on London Road, and this would be likely to appear overly large and out of scale with those dwellings in the foreground. It would also be likely to partially obstruct the views of the trees lining the site's southern boundary when viewed from Boxmoor.
42. A Landscape and Visual Impact Assessment (LVIA) has been submitted. However, although this concludes that there would be no change in visual impact from the viewpoints, only three of the ten viewpoints are within about 150 metres of the site. Of those ten viewpoints, three have foreground trees that obstruct views in the direction of the site. I appreciate that there is limited inter-visibility between the site and surrounding area due to vegetation and buildings. However, there is no evidence before me that the LVIA has considered the effect of the development on views from Boxmoor, immediately

opposite the site. Consequently, I give the conclusions of the LVIA little weight.

43. Furthermore, the spread of development would be likely to encroach beyond the current building line. The positioning of a structure beyond the building line would be overbearing, particularly given the relatively narrow road and footway width and the scale of the existing dwellings on both sides of Boxmoor. This section of London Road a distinctive semi-rural character which would be diminished by development on a scale that neither respected nor reflected its context. I appreciate that the existing buildings have little architectural merit but that does not justify this proposal.
44. In the light of the above, I conclude that Appeal B would have an adverse effect on the character and appearance of the area. This would be contrary to Paragraph 17 of the Framework which requires development to be of high quality and to take account of the different roles and character of different areas amongst other considerations, and Paragraph 58 which requires development to reflect the identity of local surroundings, also amongst other aims.
45. The indicative designs for Appeal A indicate that the proposed floor space could be contained within a building of similar size and height to the existing car showroom. As such, I am not satisfied that Appeal A would be detrimental to the character and appearance of the area.

Other matters – both appeals

46. With regard to the submission of additional information to assist the appeal, the Procedural Guide¹³ sets out a timetable and all parties have the same opportunity to comment on the submitted evidence to ensure that no party's interests are prejudiced. The previous grant of the Certificate of Lawful Development (CLD) is not of relevance as different procedures are involved. In any case, this grants a change of use from Class B2 (General Industrial) to B1 (A) (Office), and does not include retail use.
47. The appellant has raised procedural issues with the Council's handling of the applications. However, such issues are addressed in my costs decision for Appeal B.
48. With regard to the alleged discriminatory remarks made by interested parties, my reasoning is based on the evidence submitted and my observations at the visit. Moreover, as well as encouraging growth, the Ministerial foreword to the Framework states that planning should be a creative and collective exercise which allows people and communities back into planning. As such it is entirely appropriate to include the concerns of local people in my reasoning.
49. I appreciate that other schemes for the appeal site have been submitted to the Council and refused, but I have to determine the appeals before me. Pre-application advice, whether formally confirmed or not, is not binding on the Council's decision.
50. Interested parties have raised concerns in respect of flooding, the height of development and overshadowing. However, as I have found harm in respect of the main issues it is not necessary for me to consider these concerns further.

¹³ Procedural Guide to Planning Appeals, August 2016

Conclusion (Both Appeals)

51. For the reasons given above and taking all matters into account, I conclude that the development would be contrary to the relevant policies of the Council's Local Plan and Core Strategy and there are no material considerations of such weight as to warrant a decision other than in accordance with the aforementioned Local Plan. Consequently, the appeal should be dismissed.

Amanda Blicq

INSPECTOR