The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 24 August 2017

Appeal Ref: APP/N4720/W/17/3175099
Site of the former Miami Building, Lotherton Way, Garforth, Leeds LS25 2GE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Lidl UK GmbH against the decision of Leeds City Council.
- The application Ref 16/00749/OT, dated 3 February 2016, was approved on 4 November 2016 and planning permission was granted subject to conditions.
- The development permitted is in respect of a hybrid application for demolition of existing buildings and for full planning permission to erect food store (Use Class A1) including associated access, parking and landscaping and outline planning permission for retail development (Use Class A1) and public house (Use Class A4).
- The conditions in dispute are Nos. 27 and 53 which state that:

  27) *The food store shall not be brought into use until a scheme detailing the method of storage and disposal of litter and waste materials, including recycling facilities (to include recycling facilities available to the general public) has been submitted to and approved in writing by the Local Planning Authority. The details shall include a description of the facilities to be provided including, where appropriate, lockable containers, details of recyclable materials collection. The approved scheme shall be implemented before the development is brought into use and no waste or litter shall be stored or disposed other than in accordance with the approved scheme.*

  53) *Each building forming part of the outline planning permission site area of the development, as shown on approved plan No. 7102 P003 Rev F, shall not be brought into use until a scheme detailing the method of storage and disposal of litter and waste materials for that unit, including recycling facilities (to include publicly available recycling facilities) has been submitted to and approved in writing by the Local Planning Authority. The details shall include a description of the facilities to be provided including, where appropriate, lockable containers, details of recyclable materials collection. The approved scheme shall be implemented before the development is brought into use and no waste or litter shall be stored or disposed other than in accordance with the approved scheme.*

- The reason given for the condition (in each case) is:

  In the interests of amenity, to promote recycling opportunities and to ensure adequate measures for the storage and collection of wastes are put in place in accordance with the adopted Core Strategy (2014) Policy EN6 and the saved UDP Review (2006) policy GP5.

Decision

1. The appeal is allowed and the planning permission Ref 16/00749/OT for hybrid application for demolition of existing buildings and for full planning permission to erect food store (Use Class A1) including associated access, parking and landscaping and outline planning permission for retail development (Use Class A1) and public house (Use Class A4) at site of the former Miami Building, Lotherton Way, Garforth, Leeds LS25 2GE granted on 4 November 2016 by Leeds City Council, is varied by deleting conditions 27 and 53 and substituting for them the following conditions:

27) The food store shall not be brought into use until a scheme detailing the method of storage and disposal of litter and waste materials, including recyclable materials directly related to the store and the waste it generates, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the development is brought into use and no waste or litter shall be stored or disposed other than in accordance with the approved scheme, which shall thereafter be retained and operated in accordance with the approved details.

53) Each building forming part of the outline planning permission site area of the development, as shown on approved plan No. 7102 P003 Rev F, shall not be brought into use until a scheme detailing the method of storage and disposal of litter and waste materials for that unit, including recyclable materials directly related to that unit and the waste it generates, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the development is brought into use and no waste or litter shall be stored or disposed other than in accordance with the approved scheme, which shall thereafter be retained and operated in accordance with the approved details.

Main Issue

2. The main issue is whether the conditions in dispute are necessary, in their present form, to make the development acceptable in planning terms and directly related to it.

Reasons

3. The development is a major development subject to some 55 conditions by virtue of the planning permission granted by the Council. At the time of my site visit development was well underway.

4. I am conscious that a similar condition imposed on an extension to a Lidl foodstore elsewhere in the Council's area of jurisdiction was removed on appeal in August 2016.[1] The circumstances in that case were plainly different, and each case must be considered on its individual merits, but I have no reason to question the broad thrust of my colleague's reasoning in that case.

5. The National Planning Policy Framework, supported by Planning Practice Guidance, makes clear that for conditions to be appropriate they must meet all of the tests set out in paragraph 204 of the former.

6. It seems to me that the provision of recycling facilities for use by the general public, which is what the conditions in dispute require, amongst other things, serves a broader purpose than processing the waste that would be produced directly by the retail operation permitted; insofar as people using the store would tend to leave with their shopping in the usual fashion but might incidentally choose to dispose of all manner of recyclable waste in the course of their visit, whether or not it was packaging or other recyclable material emanating from the retail operations on the site.

7. I am of course aware that many retail store car parks do contain recycling facilities run by the relevant local agency for waste collection under a variety of

[1] Ref APP/N4720/W/16/3150020 (Selby Road, Leeds)

arrangements, voluntary or otherwise. The significant facility in the car park of the Tesco store adjacent to the appeal site is a case in point.

8. However, the simple fact of being common practice does not of itself justify a requirement for the appellant to necessarily follow suit. Moreover, the Core Strategy policy EN6 is concerned with strategic waste management and, as my colleague pointed out in the Selby Road appeal decision, cannot be interpreted as requiring all developments to provide independent recycling facilities as opposed to ensuring that appropriate recycling facilities are provided in response to activities associated with the development proposed. I also concur with his reasoning in respect of the policy GP5 of the Leeds Unitary Development Plan Review (2006), namely that it addresses matters arising directly from the development in question.

9. The straightforward conclusion in this case is that those elements of the disputed conditions to which the appellant objects are neither necessitated by policy or any other consideration, so as to make the development unacceptable in planning terms in their absence, nor directly related to the development in question. The requirement to make recycling facilities available on site for use by the public at large, however desirable this might be in practice, is insupportable in principle as a planning requirement and must therefore be removed from the permission granted.

10. That is not to say that the disputed conditions themselves are wholly inappropriate, simply that they are inappropriate in wording and scope. This is recognised by the appellant company, which helpfully puts forward alternative wording to meet the point. There is nothing from the Council to suggest that the alternative wording is unacceptable and I have no reason to question its appropriateness other than to note the following: First, the word "not" appears to have been inadvertently inserted into the appellant's replication of the original condition 53 in its last sentence and subsequently, as a consequence, in the suggested alternative. This of course would have the effect of negating its intention that the use cannot commence in the absence of the approved scheme for dealing with waste related to the development and would render the condition effectively unenforceable. Secondly, both the original conditions and the suggested replacements lack an ongoing implementation clause to ensure the retention and operation of the schemes in accordance with the approved details. And, finally, there is an inconsistency in the approach of the suggested conditions in the way the recycling element is to be directly related to the building in question. (The approach of suggested condition27 is preferable.)

11. In all the circumstances, and having taken all other matters raised into account, I therefore propose to vary the permission by deleting the disputed conditions and substituting those put forward as replacements by the appellant but including the necessary harmonisation of approach to recyclables, correction of the suggested condition 53 and, in each case, the addition of the words "*which shall thereafter be retained and operated in accordance with the approved details*."

Keith Manning

Inspector