



Appeal Decisions

Site visit made on 19 December 2017

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2018

Appeal Ref: APP/V4630/W/17/3179212

Site of former 105 to 123 Walsall Road, Walsall Wood, Walsall WS9 9AH

- 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 Ms Gemma Ward of Enterprise Rent-a-Car against Walsall Metropolitan Borough Council.
 - The application Ref 17/0308, is dated 5 March 2017.
 - The development proposed is change of use to car hire business, erection of reception building and construction of car parking area and wash bay.
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Decision

1. The appeal is allowed and planning permission is granted for change of use to car hire business, erection of reception building and construction of car parking area and wash bay at site of former 105 to 123 Walsall Road, Walsall Wood, Walsall WS9 9AH in accordance with the terms of the application, Ref 17/0308, dated 5 March 2017, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Enterprise Rent-a-Car against Walsall Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal was submitted on 2 July 2017 and was made on the basis of the Council's failure to determine the application within prescribed time limits. Subsequent to this, the Council produced a Planning Committee report which recommended approval of the proposal subject to a two year temporary permission. This recommendation was accepted by the Committee. The reason given for this is that a permanent permission would prejudice the allocation of the site in the emerging Walsall Site Allocation Document (WSAD). The appellant does not consider that a temporary permission would be either necessary or reasonable in this case.
4. For the avoidance of doubt, I have used the address given on the appeal form above.

Main Issue

5. In the circumstances described above, the main areas of dispute centre upon the imposition of a temporary condition and the weight to be given to the

emerging WSAD. I therefore consider that the main issues in this case are whether material considerations exist which indicate a decision other than in accordance with the development plan should be made and whether a temporary permission would be reasonable or necessary.

Reasons

6. The appeal relates to a relatively small vacant and overgrown plot of land situated on a busy main road location within a predominantly commercial area. To one side of the site sits a car dealership and on the other is a large bed shop. These are reflective of other uses in the area, which include a number of industrial, showroom and bulky goods retail uses. A canal towpath runs behind the site, with dwellings on the opposite side of the canal. The site is not allocated for any particular use in the adopted Walsall Unitary Development Plan (WUDP)(2005).
7. The Council has acknowledged that subject to conditions, there would be no conflict between the proposed use of the site and the WUDP or any other adopted policies highlighted in the Committee Report. I have seen nothing that would lead me to a different conclusion. The use would clearly be appropriate to its surroundings, make beneficial use of a vacant site and would not result in any harm to the character and appearance of the area, the highway network or biodiversity assets.
8. There would therefore be no conflict with WUDP Policy GP2 which seeks, amongst other things, to ensure development does not have an unacceptable adverse impact on the environment. There would be no conflict with WUDP policies ENV32 and ENV35 which seek, amongst other things to resist development which fails to take account of its context or surroundings and ensure new commercial buildings are appropriate to their setting. The development would be consistent with WUDP Policy ENV14 which encourages the development of derelict and previously developed sites. I am also satisfied that the access and parking arrangements would not result in any harm in relation to WUDP policies T4, T7 and T13 in terms of parking provision or highway safety. Finally, I cannot see any harm resulting from the effect of the development on trees or water resources and thus there would be no conflict with WUDP policies ENV17, ENV18 and ENV40.
9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
10. The only concern of any note highlighted by the local authority relates to the effect granting permission would have on the emerging WSAD and the allocation of the site for a Travelling Showperson's pitch and/or general housing. It is clear that the WSAD is at an advanced stage in its preparation. The plan has been submitted to the Secretary of State and hearings were due to take place in September 2017. There is nothing before me relating to the outcome of any hearings or any views of the WSAD Inspector on the plan. Nonetheless, paragraph 216 of the National Planning Policy Framework (the Framework) states that from the day of publication, decision-takers may give weight to relevant policies in the emerging plan according to three criteria. The delivery of housing is clearly consistent with the Framework and thus is an important consideration. However, the appellant has also provided evidence which suggests the landowner is not in favour of the allocation of the site.

11. The appellant contends that there is an objection to the site's inclusion in the plan from the landowner before the Inspector. The Council dispute this, arguing that the comments were not 'duly made'. It is not clear whether the Inspector has had regard to the comments and concerns of the landowner or not, though this would presumably not stop the Council from suggesting modifications to the plan if it so wished. It is also reasonable to assume that the WSAD Inspector is considering the deliverability of sites. The background to the site's inclusion in the plan, which is based on an expired permission rather than any promotion by the landowner, may be material to that consideration. Indeed, the Council has indicated that they intend to invite the WSAD Inspector to recommend a main modification to remove the site from its list of Travelling Showperson's allocations. This adds some uncertainty about the status of the site. There is no suggestion the Council intends to suggest removing the site from its general allocation. Without any conclusions from the WSAD Inspector before me, I cannot be certain this site is seen as a deliverable or important part of the housing land supply.
12. In any event, the WSAD clearly does not carry the full weight of the development plan at this time. Although the Council did not recommend the refusal of the proposal, it still technically seeks to restrict the use of the site until the outcome of the WSAD process is known. Moreover, I accept the appellant's view that a two year temporary permission would be unlikely to provide sufficient time to fully establish the business and thus such a condition would make implementation of the permission unlikely. The Council also appear to accept that the condition may not provide sufficient time for any investment to be recovered. This would represent a significant restriction on the permanent use of the site for the proposal.
13. To all intents and purposes, the approach of the Council is akin to the assertion that granting unrestricted permission would be 'premature'. The PPG¹ states that arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear the adverse impacts would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. It goes on to state that such circumstances are likely, but not exclusively, to be limited to situations where both the development is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan. It also states that where planning permission is refused on the grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process. In the circumstances of this appeal, I consider that a similar burden should be placed on the Council with regard to the imposition of a temporary condition.
14. The Council's evidence provides little detail in terms of the overall housing need set out in the WSAD, the general housing land supply, the scale of development likely from the site or its overall importance to the delivery of the strategy. In addition, no evidence has been provided which indicates what assumptions have been made about the site's delivery, particularly in light of the comments of the appellant and landowner. The Council has not provided

¹ 014 Reference ID: 21b-014-20140306

sufficient evidence to demonstrate that the scale of development that could be accommodated on this small site would be central to the emerging WSAD strategy. As such, I do not consider that the Council has satisfactorily demonstrated why the grant of an unrestricted permission in this case would prejudice the outcome of the plan-making process. In this instance, the identification of the site in the emerging WSAD is not a sufficient material consideration to indicate a decision should be made other than in accordance with the adopted development plan.

15. The Planning Practice Guidance (PPG) states that a temporary condition on a development which complies with the development plan will rarely pass the test of necessity. An example given where it may be appropriate is a 'meanwhile use' on a vacant site prior to longer term regeneration plans coming forward. While a temporary condition here is unlikely to be implemented, it could be argued that this approach would allow some use of the site until a housing scheme is delivered. However, the reason given for the condition relates to the prejudicial effect on the WSAD, rather than any expectation of a 'meanwhile use'. I have already concluded that the identification of the site within the emerging WSAD is not sufficient reason to resist or restrict the development. As such, the reason given by the Council for the condition is not justified. The development is also not being proposed as a temporary fix to an on-going problem but rather as an acceptable and policy compliant end use for the site that would bring with it a number of benefits. In such circumstances, a temporary condition would be neither reasonable nor necessary.
16. In conclusion, the development complies with the WUDP, there are no material considerations which indicate permission should be refused and the suggested temporary condition is not considered reasonable or necessary in this case.

Other Matters

17. The Canal & Rivers Trust made comments on the application relating to the effect the boundary treatments and drainage measures might have on the canal. However, they have submitted correspondence to the appeal that they have no objection to the development, subject to conditions. I have had regard to this below.

Conditions

18. I have considered the other suggested conditions as set out in the Council's Committee report in accordance with the guidance contained in the PPG. In addition to the standard condition which limits the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty. In the interests of the character and appearance of the area, I have imposed the suggested condition stipulating the use of certain materials as set out in the approved plans.
19. I have noted the comments from Environmental Health relating to the previous use of the site and am satisfied a condition relating to contamination in the interests of public health is necessary in this case. I have amended the suggested wording in the interests of clarity and precision. I have imposed a condition requiring the implementation and retention of the parking and manoeuvring areas in the interests of highway safety and the efficient operation of the highway network. For the same reason, I consider it

necessary to impose a condition ensuring the car wash bay remains ancillary to the main car hire function. This will serve to ensure anticipated levels of traffic are not exceeded.

20. In light of comments from the Canal & Rivers Trust, I have imposed conditions relating to the approval and implementation of boundary treatments and drainage details. This is in the interests of land stability, the integrity of the waterway infrastructure and to ensure the site is adequately drained without harmful effects on the canal. With regard to boundary treatments, I have based my condition on that suggested by the Canal & Rivers Trust. This does not include references to the boundary treatment to the highway, which I do not consider are necessary in relation to highway safety. I also see no reason why the boundary treatment issue needs to be addressed prior to development starting. In both conditions, I have removed superfluous references to other organisations, as it is the local planning authority that discharges the condition. The drainage condition is by necessity a pre-commencement condition to ensure the development proceeds in accordance with the approved details.
21. As discussed above, I have not imposed the suggested temporary condition as this would be neither necessary nor reasonable in this case. I have also not imposed the suggested condition on the provision of customer or disabled parking as it is not clear the extent to which spaces are intended to be for drive-on customers and what are for the storage of cars for hire. In any event, considering the nature of the use it is likely that there would be sufficient space for customer parking on the site without the necessity for this condition.

Conclusion

22. For the reasons given above I conclude that the appeal should be allowed.

S J Lee

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Other than as required by conditions 3, 4 and 8, the development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Proposed Site Plan Drawing A/03; Paving Specification Drawing A/05; Cantilever Canopy Plan 001; Perspectives Drawing A/04; 2 Bay Office Drawing 17995C; Cover Page Drawing 01.
- 3) Prior to the removal or installation of any boundary treatment to the south-east site boundary with Daw End Canal, full details on the removal and installation methodology and details of new boundary treatments, including location and foundation details, shall be submitted to and approved in writing by the local planning authority. Thereafter the works shall be carried out in full accordance with the approved details.
- 4) Notwithstanding condition 2, development shall not commence until details of a scheme for the disposal of surface water and foul sewage

have been submitted to and approved by the local planning authority. The development shall not be brought into use until the works have been completed in accordance with the submitted and approved plans.

- 5) No development shall commence until a site investigation, ground contamination survey and assessment of ground gas, having regard to current best practice, shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority and approved in writing.
- 6) The development hereby permitted shall not be occupied until all parking and vehicle manoeuvring areas have been fully consolidated, hard surfaced and drained so that waste or surface water run-off does not discharge onto the public highway or into any highway drain. The clear demarcation of the parking bays shall also be carried out in accordance with Proposed Site Plan Drawing A/03. These areas shall be thereafter retained and used for no other purpose.
- 7) The car wash bay facility hereby approved shall remain ancillary to the main car hire use and shall not at any time operate independently.
- 8) The development hereby approved shall be carried out using the following materials:
 - Brindle paving with charcoal edging as shown on the Paving Specification Drawing A/05;
 - Bay wash 5007 silver / grey as shown on the Cantilever Canopy Plan 001;
 - Exterior – buttermilk plastisol steel to body and black plastisol steel to roof fascia as shown on 2 Bay Office Drawing Number 17995C.

Schedule Ends.