

Appeal Decision

Site visit made on 12 December 2017

by J Dowling BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2018

Appeal Ref: APP/V0510/W/17/3181648

The Chequers, 58-62 Carter Street, Fordham CB7 5JT

- 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 Brian Mullin (Punch Partnerships (PML) Ltd) against the decision of East Cambridgeshire District Council.
 - The application Ref 17/00146/FUL, dated 18 January 2017, was refused by notice dated 9 June 2017.
 - The development proposed is development of neighbourhood convenience store.
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Decision

1. This appeal is allowed and planning permission is granted for the development of a neighbourhood convenience store at The Chequers, 58-62 Carter Street, Fordham CB7 5JT in accordance with the terms of the application, Ref 17/00146/FUL, dated 18 January 2017, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Brian Mullin (Punch Partnerships (PML) Ltd) against East Cambridgeshire District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - the effect of the proposal on highway safety; and
 - the effect of the proposal on the economic viability of the adjacent public house.

Reasons

The effect of the proposal on highway safety

4. Policy COM 7 of the East Cambridgeshire Local Plan (2015) (the Local Plan) requires that development should reduce the need to travel, particularly by car. It then sets out a number of criteria that development proposals should meet including amongst other things providing a safe and convenient access to the highway network (a); accommodating the efficient delivery of goods, supplies and services (e) and being able to accommodate the level/type of traffic generated without detriment to the local highway network and the amenity, character and appearance of the locality (f).
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5. The proposal would result in alterations to the width of the pavement adjacent to the site to improve visibility and to ensure pedestrian safety. However, the Council consider that these alterations would result in the narrowing of this part of Carter Street, the main village thoroughfare, which locally is considered unsafe particularly given the size and volume of vehicles using the road and the proximity of the car park entrance to a sharp bend.
6. The proposed alterations to the footpath are required by the Highways Authority to ensure the safety of pedestrians and improve visibility for vehicles entering and exiting the site. Whilst the proposals would undoubtedly reduce the width of the road I note from the Highways Authority comments that they are satisfied that the road is wide enough to accommodate the access and footway improvements and still provide the necessary width of the carriageway for a Class B road. Furthermore, I also observed on site that the new road width would be similar to the existing road width to the west of the site. While the site is in close proximity to a sharp bend I noted on site that as a result vehicles speeds reduced in the vicinity of the site. I am therefore satisfied that the proposal would provide a safe access to the highway network in accordance with the requirements of COM 7 (a).
7. In coming to this conclusion I note the comments made by the Council regarding the fact that they consider that the recorded incident rates do not accurately reflect a number of recent incidents or the level of near misses. However, this is in the main anecdotal rather than recorded evidence and as such I can only give it very limited weight. Furthermore, whilst I acknowledge that proposal would increase the number of vehicular movements it would also result in alterations to improve visibility for the site access and as a result I am satisfied that highway safety would not be compromised.
8. The Highways Authority considers that the size of delivery vehicles could be limited through the use of a suitably worded condition. I note the Council's concerns regarding the enforceability of such a condition. However, I do not judge that such a condition would be unenforceable and subject to the use of the correct wording I am satisfied that it would meet the Framework's test for conditions¹. As a result I consider that deliveries could be satisfactorily accommodated within the site.
9. I note the Council's concern that there is no dedicated service area. As a result during deliveries access to a small number of the parking spaces would be limited. The Council believe that this may lead to customers having to park on the surrounding road network during the duration of the delivery. However, I consider that the use of a suitably worded condition restricting deliveries to the times when the pub use would either not be operating or visitor numbers would be relatively low would minimise this conflict and ensure sufficient parking could be retained on site. As a result I judge that the proposal would meet the requirements of COM 7 (e).
10. Whilst I understand that the volume and frequency of vehicles accessing the site would increase as a result of the proposal I note from the original planning application that the number of parking spaces provided at the site and the location of the access would remain the same as currently provided. Furthermore, the proposal would enhance the visibility of this access. I am therefore satisfied that a 23 space car park and access in this location would

¹ Paragraph 206

not be detrimental to the local highway network. I also consider, given the existence of the current car park, that the proposal would not adversely affect the amenity, character or appearance of the locality. Consequently I consider that the proposal would comply with the requirements of COM 7 (f).

11. Policy COM 8 of the Local Plan advocates that development should provide adequate levels of car and cycle parking broadly in accordance with the Council's parking standards. Furthermore, the Council explains in the supporting text to this policy that in mixed use schemes they will encourage the provision of shared car parking facilities in order to help reduce the overall number of parking spaces and make better use of land. Finally, I note that the Council's parking standards are expressed as a maximum not a minimum.
12. The Council consider that the proposal should provide 38 parking spaces, two of which would need to be disabled, and 12 cycle spaces. The proposal would provide 23 spaces, 1 of which would be disabled and 10 cycle parking spaces. As a consequence the Council advocate that there would be a shortfall in provision which would lead to parking on the local road network.
13. In addition I note that the Council have queried the number of spaces available currently on the site citing the reference to 30 spaces made in the Planning and Heritage Statement. It was not possible to check if this statement is correct as I observed on my site visit that the markings in the car park are very faded and in parts not visible. However, I note from other evidence submitted with the appeal that the appellant has confirmed that the current car park provides 23 spaces. On this basis I am satisfied that the 23 spaces referred to is correct and as a consequence I consider that the proposal would not result in the loss of 7 spaces.
14. Whilst the proposal would not deliver the maximum number of parking spaces required by policy COM 08, I consider that, as outlined in the supporting text of the policy, the sites could work effectively together to reduce the overall number of parking spaces and make a better use of the land. I observed on site that this already appears to be occurring on an informal basis as, during my visit, a number of visitors to the existing store parked in the pub car park rather than the current store car park even though there were spaces available.
15. The appellant and the Council have both submitted parking surveys. The appellants used an independent specialist survey company and the Council's survey was provided by a local Councillor. However, despite the different methods of collection, the results recorded appear largely consistent showing that there is a peak in demand in the early evening when the Councillor recorded 16 cars parked in the pub car park. Therefore based on the locally collected data, technical information and the comments contained in the original planning officers report I consider that the proposal would deliver sufficient on-site parking to meet the needs of both the new store and the existing pub and as a result would not compromise highway safety.
16. In coming to this conclusion I have placed very limited weight on the photographic evidence submitted by the Council as these are of very poor quality and are not dated or timed.
17. Finally, I note the difference in opinion over the number of disabled spaces that would be required by the scheme. I observed on site, that currently it would

appear that the pub does not have any dedicated disabled parking spaces. The proposal would provide one space which I consider would be sufficient to meet the needs of the proposed and existing uses.

18. In conclusion the proposal would result in the creation of a convenience store within the village in accordance with the aims of policy CMO 7 as it would expand the range of facilities available within the village thereby reducing the need for residents to travel. This policy is in accordance with the National Planning Policy Framework (the Framework) which supports the provision of accessible local services. In addition, sufficient parking would be provided on site to meet the needs of both the existing pub and the proposed store in accordance with policy COM 08. As a consequence I am satisfied that the proposal would not adversely affect highway safety in the vicinity of the site.

The effect of the proposal on the economic viability of the adjacent public house

19. Policy COM 3 of the Local Plan states that proposals that would lead to the loss of community facilities will only be permitted if a number of criteria are met.
20. The Council consider that the proposal would adversely affect the economic viability of the Chequers which they believe could, in the long term, result in the loss of the facility. Their concerns are twofold. Firstly they consider that the reduction in size of the car park combined with the competition for parking spaces between people visiting the proposed new store and those going to the pub would, over time, deter people from visiting the pub thereby adversely affecting the business. Secondly, the pub which operates a takeaway element would be in direct competition with the proposed new store which is also a food retailer.
21. The Council have not submitted any evidence to support either of these claims advocating that it is for the appellant to provide the evidence to demonstrate that the proposal would not adversely affect the pub rather than the Council to prove that it would.
22. With regards to the concern about a shortage of parking provision at the site deterring visitors to the pub, for the reasons set out above, I have concluded that I am satisfied that sufficient parking is being provided. As a consequence I do not consider that future visitors would be deterred from visiting the pub.
23. The proposed new convenience store, whilst larger than the existing Co-Op would be comparatively small and as such the goods and services it would offer would be relatively limited and would be different to those services provided by the pub. As a result I do not consider that it would compete with the services provided by the pub.
24. Finally, the appellant owns and operates the pub and whilst a detailed viability study has not been provided it is clear from the evidence submitted with the appeal that they are confident that the pub will continue to operate successfully.
25. As a result I am satisfied that the proposal would not adversely affect the economic viability of the adjoining pub which would lead to the eventual loss of this community facility and as a result I consider that policy COM 3 is not applicable. Furthermore I consider that the provision of a new shop would be in accordance with bullet point four of paragraph 28 of the Framework.

Other matters

26. The Chequers is a Grade II Listed building in addition to which the site is located within the Fordham Conservation Area. As a consequence in considering the proposal I must have regard to sections 66(1) and 72 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 which require me to pay special regard to the desirability of preserving the listed building or its setting and the character and appearance of the Conservation Area.
27. The proposal is for a simple building that would be constructed of traditional materials and that would be sited in such a way to ensure that it would not compete with the listed building in the streetscene. As a consequence the proposal would not result in substantial harm to the character and appearance of the setting of the Listed Building or the Fordham Conservation Area. Where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, the Framework² advocates that this harm should be weighed against the public benefits of the proposal.
28. The proposal would deliver a new convenience store in the heart of the village which would enhance the sustainability of the village by reducing the need for residents to travel. As a result I consider that the public benefits that would be delivered by the scheme outweigh what little harm the proposal would have on the setting of the listed building or the character and appearance of the Fordham Conservation Area. As a result I consider that the proposal would meet the requirements of sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Section 12 of the Framework.
29. I note that the Council have made several references to proposals for additional houses in and around the village which they advocate will increase vehicle movements through the village which could lead to highway safety issues. However, as I have concluded that the site could be accessed safely and sufficient parking is proposed for the size of the store and the existing pub I do not consider that future potential increase in traffic would result in highway safety issues from the proposal.

Conditions

30. Paragraph 206 of the Framework sets out a number of tests that conditions need to meet. I have considered the conditions suggested by the Council and unless otherwise stated judge that they meet the tests. Where necessary for clarity or enforceability I have re-ordered them or adjusted the wording. In addition to the standard time limit, in the interests of enforceability I have imposed a condition requiring that the development be carried out in accordance with the approved plans.
31. In the interest of the character and appearance of the adjoining listed building and the wider surrounding area I consider that conditions requiring the submission and approval of external materials and hard landscape works would be necessary.
32. To ensure highway safety I consider conditions regarding the laying out of the access; provision of manoeuvring space for vehicles within the site; the provision and retention of visibility splays and a restriction on size of delivery vehicles and delivery times would be necessary. In addition given the concerns

² Paragraph 134

- regarding parking a condition requiring the laying out of the car park and the retention of the spaces as laid out is also, in my opinion, necessary.
33. Given the proximity of the site to a listed building and its location within the village I consider that conditions requiring the provision, implementation and maintenance of a landscaping scheme would be necessary.
34. The site is located within the centre of the village in close proximity to a number of residential properties and as a result I consider the conditions controlling the hours of opening and the hours of deliveries would be necessary. However, in light of the evidence submitted I have amended the hours of delivery times to 07:00 to 18:00 Monday to Saturday when visitors to the adjoining pub use would be lower.
35. I agree with the Council that given the location of the site a condition managing construction would be necessary in order to enable the existing pub use to continue and to ensure highway safety. However, in addition to the matters suggested by the Council I have amended the condition to require details of how some parking provision will be maintained at the site for pub customers during construction. I consider this necessary to address the concerns about the continued viability of the pub during construction.
36. The proposal would result in the creation of a large area of hard surfacing and as a result I consider that a condition requiring the testing of soakaways would be reasonable.
37. Given the proximity of the site to a number of residential properties I consider that conditions requiring the submission and approval of a lighting scheme; managing the noise generated by plant and restricting the further introduction of plant would be necessary to ensure that they are sited in such a way as to minimise the effect on the living conditions of the occupiers of adjoining properties.

Conclusion

38. For the reasons given above, and having regard to all other matters raised, I conclude that subject to the conditions set out in the attached schedule that this appeal should be allowed.

Jo Dowling

INSPECTOR

Conditions Schedule

1. The development hereby permitted shall be commenced within 3 years of the date of this permission.
2. Development shall be carried out in accordance with the drawings and documents listed below 100, 101, 102 rev C, 103 rev C, 5614/SK501., KR05600 Noise Impact Assessment.
3. No above ground construction shall take place on site until sample details of the external materials including but not limited to; walls and roofing to be used on the development and detailed window and door designs have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.
4. No above ground construction shall take place until full details of hard landscaping works have been submitted to and approved in writing by the Local Planning Authority, these details shall include but not be limited to hard standing materials and the layout of the car park. The works shall be carried out in accordance with the approved details prior to the occupation of any part of the development, the commencement of the use or in accordance with a programme agreed with the Local Planning Authority.
5. Prior to first occupation or commencement of the use the access shall be laid out in accordance with drawing 102 Rev C including access width and shall thereafter be retained in perpetuity.
6. Prior to first occupation or commencement of use of the development sufficient space shall be provided within the site to enable vehicles to enter, turn and leave the site in forward gear and to park clear of the public highway as shown on drawing 102 rev C. The area shall be levelled, surfaced and drained and thereafter retained for that specific use.
7. Prior to commencement of use visibility splays shall be provided each side of the vehicular access in full accordance with the details indicated on the submitted plan 102 Rev C. The splays shall thereafter be maintained free from any obstruction exceeding 0.6m above the level of the adjacent highway carriageway.
8. Prior to first occupation or commencement of use a full schedule of the landscaping details as shown on plan 102 rev C shall be submitted to the Local Planning Authority and agreed in writing. Details are to include written specification of the species of tree and a detailed implementation programme. The works shall be carried out in accordance with the approved details prior to the end of the first planting season. If within a five year period from the date of planting, or replacement planting, the tree is removed, uprooted or destroyed or dies, another tree of the same species shall be planted at the same place unless otherwise agreed in writing by the Local Planning Authority.
9. Prior to first occupation or commencement of use a scheme for the maintenance of the soft landscaping for a minimum period of 5 years from last occupation, shall be submitted to and agreed in writing by the Local Planning Authority. All works shall be maintained in accordance with the agreed scheme. The scheme shall include the following:

- i) methods for the proposed maintenance regime;
- ii) detailed schedule;
- iii) detail of who will be responsible for the continuing implementation;
and
- iv) details of any phasing arrangements.

10. The use hereby permitted shall take place only between the hours of 07:00 - 23:00 each day.

11. Delivery and collection times, including waste collections, to/from the development hereby approved shall be carried out between the hours of 07:00 and 18:00 Monday to Saturday.

12. No development shall take place, including any works of demolition, until a Construction method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- 1) delivery and construction working hours;
- 2) delivery routes and access points;
- 3) facilities for loading and unloading of plant and materials;
- 4) details of how plant and materials used in constructing the development will be stored;
- 5) measures to control the emission of dust and dirt during construction, including wheel washing;
- 6) a phasing plan/timescale for implementation of the development; and
- 7) details of how some parking provision will be maintained at the site for pub customers during construction.

13. Prior to the first occupation or commencement of use a detailed external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. All works shall be completed in accordance with the approved scheme.

14. The specific rated noise level from the plant on site shall not exceed 37dB(LAeq, 1 hr) free field at any residential premises during the opening hours of 07:00-23:00, or 31dB(LAeq, 15min) free field at any residential premises during closed periods. The noise levels shall be measured and/or calculated in accordance with BS4142:2014.

15. Delivery vehicles to the hereby approved store and existing public house shall be restricted so that they are no larger than 11 metre rigid. The measurement shall be taken from bumper to bumper of the delivery vehicle.

16. Prior to above ground development the results of soakaway testing shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the results of the soakaway testing and drawing 5614/SK501 prior to commencement of use.

- 17.No additional external plant or machinery shall be installed without prior written approval with the Local Planning Authority by way of planning permission.
- 18.All plant is to be installed in accordance with the agreed scheme and maintained in accordance with the details submitted in KR05600 Carter Street Co-Op' V1.3 dated 3 May 2017 and the manufacturer's instructions. The noise level from plant will be at or lower than those assessed within the noise report.