
Appeal Decision

Hearing held on 1-2 May 2018

Site visit made on 2 May 2018

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2018

Appeal Ref: APP/P4605/W/17/3182279 Old Horns Crescent, Birmingham B43 7HA

- 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 Aldi Stores Limited against the decision of Birmingham City Council.
 - The application Ref 2016/09132/PA, dated 1 November 2016, was refused by notice dated 16 February 2017.
 - The development proposed is site clearance including hard-surfacing and construction of a Class A1 Food Retail Store with associated car parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Hearing was scheduled to last two days but I was able to close it on the first day. Consequently, the second allocated day comprised only my site visit.
3. At the Hearing, the appellant provided an executed Agreement pursuant to the provisions of section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000. The need for this agreement has arisen because the appellant does not own the land on which the development is proposed to take place and it is intended to provide a legal mechanism for securing the appellant's agreement to enter into planning obligations by way of an agreement under section 106 of the Town and Country Planning Act (s106 Agreement) upon acquiring any legal interest in the site. The S106 Agreement includes a number of obligations to come into effect in the event that planning permission is granted and I consider these below.
4. The proposed development was originally refused for four reasons. However, the Council did not seek to defend refusal reasons relating to loss of open space (which forms part of a Site of Importance for Nature Conservation (SINC)) or transport and highways.

Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the area having particular regard to its design and the loss of protected trees.

Reasons

Planning policy

6. The development plan includes the policies of the Birmingham Development Plan (2017) (BDP). BDP policy PG3 sets out a number of requirements within its overall objective of place making. It says that all new development will be expected to demonstrate high design quality, contributing to a strong sense of place. Amongst other things, new development should reinforce or create a positive sense of place and local distinctiveness, with design that corresponds to site conditions and the local area context.
7. BDP policy TP7 seeks to maintain and expand a Green Infrastructure (GI) network throughout Birmingham. It says that the integrity of the GI network will be protected from development and where possible opportunities will be taken to extend and enhance the network and to improve links between areas of open space.

Considerations on the main issue

8. The appeal site comprises a parcel of land on the corner of Old Horns Crescent and the busy Queslett Road. The surrounding area is characterised by the neighbouring large ASDA store including its associated car park and petrol station, housing and a major road. There is also a recently developed medical centre neighbouring the site to the south-west. The new store building would be located on the corner of Old Horns Crescent and Queslett Road with the proposed car park covering the remainder of the site.
9. Although there are areas of hardstanding within the site, it is bounded by mature trees some of which are growing on substantial earth banks. In addition, much of the inner site is being colonised by pioneer tree and shrub species. From public vantage points, there is no clear visual distinction between the site and the substantial wooded area of the SINC to the south.
10. The trees on the site are prominent from within Old Horns Crescent, along Queslett Road, from the residential area opposite and from the car park and pedestrian circulation areas around the ASDA store. The site has a less managed appearance in contrast to the semi-ornamental plantings in and around neighbouring development. The trees on the site and the absence of development therefore play a valuable role in maintaining a verdant sylvan area within the more manicured urban surroundings. In my view, this serves to amplify their positive contribution to the local environment.
11. The land slopes markedly from Old Horns Crescent down to Queslett Road. The proposed remodelling of the land to address this change in levels in combination with the layout of the site would result in the building sitting well above and close to Queslett Road and around its junction with Old Horns Crescent.
12. Whilst the scheme would provide for new tree planting around the site's boundaries, because of the existence of underground services running along its edge broadly parallel to Queslett Road, much of that area would be planted with shrub species. Whilst it would maintain some semblance of a naturalistic vegetated boundary, it would not prevent the building from being highly visible in views along Queslett Road and from the residential area opposite.

13. Moreover, many of the proposed trees would be in close proximity to the building and it is reasonable to conclude that they would be subject to regular management such that they would be unlikely to reach the stature, spread and unmanaged character of those that currently exist. Consequently, the building would remain visually prominent in local views.
14. The layout of the proposed development would result in an inward facing store with substantial plain elevations around the Old Horns Crescent/Queslett Road junction. In combination with the installation of a crib-lock timber retaining structure, the proposal would result in a significant urbanisation of what currently appears as an extension of the wooded landscape of the SINC.
15. At my site visit, I noted the presence of the neighbouring medical centre and the character of the grounds around it. This building sits behind a substantial open frontage and can clearly be seen from Queslett Road. Nevertheless, it is essentially surrounded on three sides by woodland and because this forms its backdrop, in combination with its set-back from the road, the medical centre building's visual effects on the street scene are minimised. It has not had a significant influence on the sylvan character of the appeal site or the surrounding wooded area.
16. The trees on the site are protected by an area Tree Preservation Order (TPO). The use of this method of tree protection was questioned by the appellant. Planning Practice Guidance says that the area category is intended for short-term protection in an emergency and may not be capable of providing appropriate long-term protection. However, this does not mean that an area designation is in some way the poor relation to another form of TPO.
17. I accept that individually, the trees might not all be assessed as good specimens for the purposes of a BS 5837:2012 survey although the majority have been given a category B retention value in the appellant's Arboricultural Impact Assessment¹ (AIA). However, their value arises from the contribution they make to the area's character and appearance as a group rather than as individuals. Indeed this is recognised in the AIA. Even if some of the trees were to be removed from within the main body of the site, there is sufficient width to the mature tree belt around the site's boundaries to maintain the sense of a wooded area with a clear visual link to the much larger expanse of woodland within the SINC.
18. There was discussion at the Hearing relating to whether the site and its trees are included in the Green Infrastructure network as defined on the map that follows policy TP7 and thus, whether that policy is applicable to the appeal proposal. Irrespective of whether it is or not, it seems to me that this green and wooded site sits comfortably within the broad definition of what constitutes GI. Moreover, the extent of GI can change over time and the inclusion or lack of it on a plan within a document does not mean that the site should be discounted from forming part of the GI network in Birmingham. In any case, part of the site is within the SINC, which is denoted on the GI map. Accordingly, I do not find any clear policy reasons for the site not to be considered as GI.
19. The Council owns the appeal site and has made it available for sale and confirmed at the Hearing that it envisages some form of retail development

¹ By Middlemarch Environmental, document reference RT-MME-123362-04 dated August 2017

upon it. However, that in itself does it imply or guarantee that planning permission will be forthcoming even though planning matters may have been taken into account by the Council in its decision to dispose of the land.

20. I accept that the only practical option for locating the access to a proposed development would be from Old Horns Road and that this would necessitate opening up part of the tree belt along this part of the site's boundary. However, I do not consider that there would be a need for wholesale tree removal in order to develop the site for the purpose that the Council envisages.
21. I also acknowledge that the loss of the site to the proposed development would account for only a very small proportion of the overall GI network in this part of the city. However, I have nonetheless found that it makes an important contribution to the local environment. Moreover, the trees comprise a significant constraint and their statutory protection carries very substantial weight.
22. It was put to me that the proposed development would address potential contamination on the site and the issue of anti-social behaviour. However, neither relies on the site being developed in the way proposed.
23. The proposal would have a significant adverse effect on the character and appearance of the area because of its design and the loss of protected trees. Thus, it would not reinforce or create a positive sense of place and local distinctiveness, with design that corresponds to site conditions and the local area context. It would thereby run counter to BDP policy PG3. Furthermore, it would not accord with the GI objectives of BDP policy TP7.

Planning obligations

24. The S106 Agreement would provide for an off-site contribution to mitigate the ecological effects of the proposed development through loss of part of the SINC. It would not therefore be providing any clear benefits that might otherwise weigh in favour of the development. Accordingly, and as I am dismissing the appeal for other reasons I do not need to consider this matter further.

Other Matters

25. The proposal would generate around 30 FTE equivalent jobs although this might be off-set by people moving from other stores. Given that Aldi is a discount retailer, the development of a store in this location would provide more local choice particularly for those on tight budgets. It would also enhance the overall vitality of the local centre to which it would essentially form part. These are all benefits that weigh in favour of the proposal.

Conclusion

26. Whilst the proposal would provide a number of benefits, these would not, either singly or collectively, outweigh the clear identified harm to the area's character and appearance through the unacceptable design of the development and the loss of protected trees. Consequently, the appeal does not succeed.

Hayden Baugh-Jones

Inspector

APPEARANCES

FOR THE APPELLANT:

Richard Humphreys of Queens Counsel	No 5 Chambers
Neil Denison	Turleys Associates Limited
Hamish Latchem	Aldi Stores Limited
Nicholas Bradshaw	Connect Consultants Limited
Harry Flaxman	Connect Consultants Limited
Dr Katy Read	Middlemarch Environmental Limited
Robert Hughes	Tyler Grange Limited
Jonathan Wood	Stoas Architects Limited

FOR THE LOCAL PLANNING AUTHORITY:

Wahid Gul	Birmingham City Council
Kevan Spink	Birmingham City Council
Julie Sadler	Birmingham City Council

INTRESTED PERSONS:

Brenda Wilson	The Friends of Queslett Nature Reserve
Linda Griffiths	The Friends of Queslett Nature Reserve
Robert Wild	The Friends of Queslett Nature Reserve

DOCUMENTS SUBMITTED AT THE HEARING

1. Un-executed section 111 Agreement (appellant)
2. Un-executed section 106 Agreement (appellant)
3. Site's planning history (appellant)
4. e-petition against appeal proposal (Brenda Wilson)
5. Appeal statement of Brenda Wilson
6. Medical centre proposed site plan drawing no 399 L(0)02 G (appellant)
7. Google earth image of appeal site and surrounding area from 1945 (appellant)
8. Response to matters raised on behalf of ASDA (appellant)
9. Consolidated section 111 Agreement (executed) and section 106 Agreement (appellant)