



Appeal Decision

Site visit made on 10 June 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd July 2019

Appeal Ref: APP/G4620/W/19/3225427

The Sportsman, St Mark's Road, Tipton DY4 0SZ

- 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 Paul Stubley, on behalf of Heron Foods Ltd, against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/18/62117, dated 6 August 2018, was refused by notice dated 12 November 2018.
 - The development proposed is the re-development and extension of existing Public House to provide a new Class A1 local food store along with associated car parking and servicing.
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Decision

1. The appeal is allowed. Planning permission is granted for the re-development and extension of an existing Public House to provide a new Class A1 local food store along with associated car parking and servicing, at The Sportsman, St Mark's Road, Tipton DY4 0SZ, in accordance with the terms of the application DC/18/62117 dated 6 August 2018, and subject to the attached schedule of conditions.

Procedural Matters

2. The Council did not refer to development plan policies on the Decision Notice. However, both parties have made reference to policies from both the Black Country Core Strategy 2011 (CS) and the Sandwell Site Allocations and Delivery Development Plan Document 2012 (SADDPD) in evidence which are of relevance to the appeal. I will also take into account the National Planning Policy Framework (The Framework) as a material consideration in line with paragraph 212 of the Framework.
3. The appellant has made a minor adjustment to the plans associated with the access onto Eastfield Road, drawing: Proposed Site Plan 12187/DB3-B01-00-DR-A-90-003 rev A. This is a minor alteration, showing that vehicles would enter from Eastfield Road and egress onto St Mark's Road and includes sweep path analysis. The Council has commented on this further evidence. Also, the nature of concerns of consultees are clear from the original set of plans, I do not consider that their interests would be prejudiced if I take this amended plan into account. I shall therefore determine the appeal based on the plans referred to on the decision notice as well as the revised access details submitted as part of this appeal.

Application for costs

4. An application for costs was made by Heron Foods Limited against Sandwell Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are:

- The effect of the proposal on highway safety, with particular regard to the use of the Eastfield Road access, for delivery vehicles, and
- The effect of the proposed use on the living conditions of adjacent residential properties, particularly 14 Eastfield Road (No 14), in terms of noise and disturbance.

Reasons

Highway safety

6. The appeal site is within a commercial area and adjacent to residential areas. As a result, on-street parking demand is relatively high. This was confirmed during my visit where local highways, especially Ridgeway Road, were heavily occupied with parked cars.
7. The proposal seeks to provide a one-way system for delivery vehicles. St Mark's Road is wide and would present no difficulties when delivery vehicles egress. Eastfield Road and Ridgeway Road offer a more awkward access. However, on-street parking is relatively common in the area, as supported by the appellant's surveys. Therefore, existing delivery vehicles must already navigate these roads to service the existing public house and other local commercial and residential properties. The appellant identifies that a maximum of three delivery vehicles would attend the site daily. These would therefore be relatively infrequent. Subsequently, I am content that safe access can be achieved to the rear of the site provided that the proper care and attention is paid by road users.
8. Furthermore, the Framework explains that development should only be refused if there would be an unacceptable impact on highway safety, or if the cumulative effects would be severe. The current use of the site entails the movement of delivery vehicles, and the proposal would result in only a moderate increase of such movements with a limited impact on highway safety. Although, I have identified some potential difficulty this would be insufficient to amount to unacceptable harm to highway safety or result in a severe impact. A condition, preventing the egress of delivery lorries onto Eastfield Road would further reduce the residual effects of the proposal in these regards. Also, the access onto Eastfield Road, as depicted on the Revision A version of the site plan, would ease turning into the site and thus improve this arrangement to some extent. Therefore, in regard to the above, the proposal would not represent significant harm to highway safety, and as a result would not conflict with the Framework in this regard.
9. I have found that the proposal would comply with policy TRAN2 of the Black Country Core Strategy 2011 (CS), which seeks to resist development that would have significant transport implications. The proposed development would

also comply with policy SAD TRAN3 of the Site Allocations and Delivery Development Plan Document 2012 (SADDPD), which amongst other things seeks proposals to address the road safety implications of development.

Living conditions

10. The appeal site consists of a public house with car parking at its front and rear. It is bounded by three highways. Vehicular access is gained from both St Mark's Road and Eastfield Road. The western boundary is adjacent to a row of dwellings and a medical centre. A nursery, Tipton Sure Start Centre and library are to the east of the site, over Ridgeway Road. The surrounding area is a mix of residential, commercial and community activities and uses. The garden of No 14 is adjacent to the service bay and goods delivery door of the existing public house.
11. Paragraph 180 of the Framework requires development to mitigate and reduce to a minimum any potential adverse impacts resulting from noise from new development. The Guidance explains that when considering noise effect, it is necessary to identify whether the noise exposure is above or below the significant observed adverse effect level¹. Furthermore, the explanatory note to the Noise Policy Statement for England², states that significant adverse effects would result in an effect to the health and quality of life of an individual.
12. The appellant's noise report³ applies the BS4142 standard to assess and rate the associated commercial noise levels. Baseline noise data was collected from a point adjacent to the garden of No 14. The background noise level, at the noise sensitive receptor, was 50 dB LA90, 15min. The report explains that all deliveries would take place in the daytime and be limited to 3 a day. The report also finds that the associated external plant zone would create noise levels no greater than 29 dB LAeq,1hr. Also, the daily exposure of delivery vehicle noise would be 51 dB LAeq,102mins.
13. These conclusions accord with my general findings on my visit and the noise report appears to be reasonable. The existing lawful use could cause noise disturbance into the late evening, whereas the proposed use would be more likely to be busier in the daytime. This would reduce noise disturbance in less sociable times of the day. I am therefore satisfied that the noise effect of the proposal would be only slightly higher than the existing background noise. Furthermore, any noise effect would be further mitigated by the adherence to the attached conditions that would enclose the plant area and improve the acoustic properties of the boundary fence. Consequently, noise levels would not be appreciably different to the existing arrangement and would therefore not result in significant effects. No contradictory evidence in these regards has been submitted sufficient to challenge substantially the findings of the report.
14. Moreover, the servicing arrangement for the existing building would be retained as part of the proposed development, being located to the side of the building and adjacent to the boundary of no 14. Delivery vehicles are proposed to enter from Eastfield Road and egress onto St Mark's Road. Whereas, I understand that the existing servicing arrangement requires delivery vehicles to manoeuvre on site and enter and exit via Eastfield Road. Therefore, in

¹ Paragraph: 004 Reference ID: 30-004-20140306

² Department for Environment, 21 January 2015

³ Noise Impact Assessment, Environmental Noise Solutions Ltd, 19 March 2019

contrast to the existing arrangement, the proposed servicing would provide a simpler access arrangement, with a reduced need to manoeuvre on site, and a consequent reduction in the amount of noise and disturbance caused by such manoeuvres. The substantive evidence before me indicates that the proposal would avoid significant adverse noise effects. Accordingly, these considerations lead me to the conclusion that the proposed development would avoid material harm to the living conditions of the occupiers of No 14 and surrounding adjacent properties.

15. I have subsequently found that the proposal would comply with paragraph 127 of the Framework which seeks development creates places that are safe, inclusive and accessible and create a high standard of amenity for existing and future users.

Other matters

16. The substantial objection to the planning application included three petitions and 230 letters in opposition. Beyond issues relating to highway safety, representations mostly raised concerns in regard to the loss of the public house as a community facility. Furthermore, the local community has applied to register the building as an Asset of Community Value (ACV). The Council has recently stated that the property is proposed to be designated an ACV, meaning that it is considered to further the well-being of the local community. However, despite being prompted the Council has been unable to confirm when the designation will be confirmed.
17. I sympathise with the concerns of the local community and recognise the value that residents must place on this facility. However, the site is within the St Mark's Local Centre and being under 500 sqm would satisfy the Council's retail policy for the location of new retail activity. Consequently, the principle is supported in the development plan. Furthermore, no development plan policy seeking to retain public houses has been drawn to my attention during the course of the appeal. Moreover, even if the property is formally designated an ACV this would only have a limited bearing on my decision as its greatest effect would be to prevent the sale of the asset until it had been offered to the community for a protected period of 6 months. The appellant has declared on the appeal form that Heron Foods owns the property and as such the benefits of being designated an AVC would be limited in this case.
18. Representations have also raised the effect of the proposal on local retailers. However, no substantive evidence is before me that illustrates whether or how local retailers would be directly affected. Furthermore, it is unlikely that a single retail unit, of under 500 sqm and being of relatively modest scale, would have a significant effect on an individual retailer. In any event, commercial considerations such as these are essentially private matters and therefore do not have a material bearing on my assessment of the proposal's planning merits.
19. Representations have been made in reference to the effect of additional lorries and cars in regard to pollution levels and the safety of local road users (including children and elderly residents). However, traffic levels would be unlikely to significantly differ from the lawful use of the premises. In any event, most traffic would use the access from St Mark's Road with a limited effect on the living conditions of nearby residents.

Conditions

20. I have considered the use of conditions in line with the advice set out in the Government's Planning Practice Guidance. I shall impose some of the Council's suggested conditions and have altered the wording where relevant in the interests of clarity and precision.
21. I have added a condition to limit the commencement of development to three years and to list the approved plans, both of which are necessary in the interests of certainty [1 and 2]. I have added conditions regarding delivery hours and in regard to the fence on the western boundary and the plant enclosure, in accordance with the recommendations/assumptions of the noise report. I have also added a condition that would prevent delivery vehicles from leaving the site onto Eastfield Road, to reduce conflicts on the relatively narrow roads to the rear and side of the site. I am satisfied that no party would be prejudiced by these additional conditions as the first two are recommended by the Framework, the following two were assumptions in the appellant's noise report and the final condition has been agreed in the appellants statement of case. I have also combined the two matters relating to construction disturbance.
22. I have also attached the following conditions; to protect the living conditions of adjacent occupiers and address the conclusions of the noise report [3, 4 and 8]; to safeguard the character and appearance of the area [5]; to satisfy the requirements of the Black Country Air Quality Supplementary Planning Document 2016 [6]; and to ensure the safe servicing of the site [7].

Planning balance and conclusion

23. The proposal would not have a material effect on the living conditions of adjacent residents or cause substantial harm to highway safety. The proposed retail use would include new employment opportunities and represent positive investment in the site and building. Although the loss of the community facility would be of moderate weight in the planning balance, this would not outweigh the benefits of the proposal in its overall compliance with the development plan policies drawn to my attention and the Framework. For the above reasons, and having taken into account all matters raised, the appeal is allowed.

Ben Plenty

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be constructed in accordance with the following approved plans: Proposed Site Plan 12187/DB3-B01-00-DR-A-90-003 rev A, Location Block Plan 12187/DB3-B01-00-DR-A-90-002, Proposed Basement and First Floor Plans 12187/DB3-B01-00-DR-A-20-006, Proposed Elevations [sheet 1 of 2] 12187/DB3-B01-00-DR-A-20-004, Proposed Elevations [sheet 2 of 2] 12187/DB3-B01-00-DR-A-20-005 and Proposed Ground Floor Plan 12187/DB3-B01-00-DR-A-20-003.
- 3) The retail use hereby permitted shall only take place between the following hours: 0800 to 2000 hours Mondays to Sundays (including Bank Holidays). All deliveries shall only take place between the following hours: 0800 to 1830 hours Mondays to Sundays (including Bank Holidays).
- 4) Prior to the occupation of the approved use, details of the repair and (where agreed) replacement of the western boundary fence and plant enclosure fence (in accordance with the Noise Impact Assessment by Environmental Noise Solutions Ltd dated 19 March 2019), shall be submitted to and approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before the building is first occupied and shall be retained thereafter.
- 5) Prior to the commencement of above ground development, details of all materials to be used externally shall be submitted to and approved in writing by the local planning authority. The development shall be built in accordance with the approved materials.
- 6) Prior to the first occupation of the development hereby approved, details shall be submitted to and approved in writing by the local planning authority that indicate the location and specification of two vehicle charging points. The vehicle charging points shall be fully installed in accordance with the approved details, shall be operational before the use hereby approved commences, and shall be retained thereafter.
- 7) Delivery vehicles shall not exit the site onto Eastfield Road at any time.
- 8) Construction works and all activities associated with the development of the site shall only take place between 07.30 to 18.00 Mondays to Fridays and 08.00 to 14.00 on Saturdays, with no such work/activities on Sundays and Bank Holidays. There shall be no bonfires on site at any given time. Dust, during demolition, site clearance and construction shall be controlled through dust control measures at all times.

End of Conditions