



Appeal Decision

Hearing Held on 13 August 2019

Site visit made on 13 August 2019

by Christa Masters MA (Hons) MRTPI

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

Decision date: 20th September 2019

Appeal Ref: APP/A2280/W/19/3227260

Plot 1, Medway City Estate, Anthony's Way, Frindsbury, Kent ME2 4DW

- 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 Location 3 Properties Ltd against The Medway Council.
 - The application Ref MC/18/1818, is dated 15 June 2018.
 - The development proposed is erection of retail development (Use Class A1) trade counter units (Use Class B8) and a drive-thru restaurant, together with associated access, servicing and infrastructure works, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of retail development (Use Class A1) trade counter units (Use Class B8) and a drive-thru restaurant, together with associated access, servicing and infrastructure works, car parking and landscaping at Plot 1, Medway City Estate, Anthony's Way, Frindsbury, Kent ME2 4DW in accordance with the terms of the application, Ref MC/18/1818, dated 15 June 2018 and the plans submitted with it, subject to the conditions in the schedule at the end of this decision.

Application for Costs

2. An application for costs was made by Location 3 Properties Ltd against Medway Council. An application for costs was also made by Medway Council against Location 3 Properties Ltd. These applications are the subject of separate decisions.

Procedural Matters

3. A signed and dated Statement of Common Ground (SoCG) in relation to highways matters was agreed by the main parties and was provided in advance of the hearing. A further SoCG in relation to planning matters was confirmed at the hearing as an agreed document.
4. A signed and dated Unliteral Undertaking (UU) in accordance with Section 106 of the Town and Country Planning Act 1990 was submitted by the appellant after the close of the hearing. This contains an obligation to contribute towards a Travel Plan for the Medway City Estate. I return to this obligation later in my decision.

5. There is agreement between the parties that the site benefits from an extensive history of retail planning consents and that an extant retail consent exists on part of the site.

Main Issue

6. The effect of the development on the safe and efficient operation of the highway network in the vicinity of the appeal site.

Reasons

7. Policy T1 of the Medway Local Plan (2003) is a four part policy which relates to highways impacts of development. The Council confirmed at the hearing that the alleged conflict related to parts (i) and (ii) of this policy only. In summary, (i) advises that proposals will only be permitted if the highway network has adequate capacity to cater for traffic which would be generated by the development, taking into account alternative modes to the private car and (ii) the development will not significantly add to the risk of road traffic accidents. Taking into account the evidence presented and discussions which took place at the hearing, I deal with each of these matters in turn.
8. In addition to policy T1, the site is currently allocated by policy T17 in the Medway Local Plan (2003) as a site for a park and ride location. There was no dispute between the parties that the provision of a park and ride facility was not viable as part of the appeal proposal. As a result, no conflict was alleged with policy T17. I have no evidence before me which would lead me to reach a different conclusion on this matter.

Capacity and functioning of the highways network

9. The appeal site is located off Anthony's Way, a road which provides access to the wider Medway City Estate which is an established employment area within Chatham. Anthony's Way connects to the A289 at the Vanguard Way roundabout which is located slightly north of the appeal site. This is a dual two-lane highway which connects to the Medway Tunnel to the east and wider road network to the north.
10. Reflective of its employment location, traffic surveys undertaken confirm that Anthony's Way is most heavily trafficked during the AM and PM peak as people arrive and depart from work. There was broad agreement between the parties that the PM peak represented the highest traffic flows along this road and again this was born out by the traffic surveys undertaken. I also observed from my site visits traffic queuing along Anthony's Way on the approach to the Vanguard Way roundabout.
11. As a result of the existing traffic situation, the Council have undertaken a number of initiatives to improve the flow of traffic in this area. These include yellow lines providing loading restrictions along Anthony's Way which came into force in January 2019 for an 18 month period. Additional improvements have also occurring on the wider network including the installation of traffic signals at the westbound entrance to the tunnel in 2016. The Council advised that monitoring of these signals has demonstrated that the signals are successful in generating gaps in the traffic, and delivering time saving benefits to the flow of traffic as a result. There is a Local Growth Fund to deliver traffic and modal shift improvements for users of the Medway City Estate as well as physical improvements to increase traffic capacity. Although it was acknowledged that

funding for elements of the capacity improvements is yet to be secured by the Council, these initiatives nevertheless demonstrate a commitment to existing and proposed area wide highways improvements in order to address the existing barriers to movement within the Medway City Estate. In my view, taking into account the evidence provided, these existing and potential initiatives have the ability to have a beneficial impact on addressing the existing highways congestion to the benefit of the free flow of traffic in the area.

12. The appeal proposal would upgrade the existing access at Terance Butler Avenue to a traffic signal-controlled junction. In addition, the existing highway would be widened as well as a traffic control signal to Enterprise Close. A signal-controlled pedestrian crossing would also be introduced. A number of concerns raised by the Council relate to the flow and functioning of the highway. I observed on my site visit vehicles attempting to exit and enter Terance Butler Avenue to access the existing McDonalds drive thru restaurant. At present, vehicles attempting to cross back onto Anthony's Way can delay the free flow of the traffic in this area. In my view, the addition of a signalised junction and other highways improvements I have outlined would assist in managing the flow of traffic in this area. They represent a proportionate package of highways measures to the scale of development proposed.
13. The appellant has put forward a Unilateral Undertaking which would provide a contribution of £75,000 towards the development of a Medway City Estate wide travel plan. The Council acknowledge that this would assist in addressing the non-car accessibility of the site and I concur with this view. I shall return to the relative merits of this Unilateral Undertaking later within my decision
14. The appellant utilised a VISSIM microsimulation modelling to provide an appropriate base model to assess the impact of the proposal on the immediate area. The Local Model Validation report, June 2019 explains the approach adopted in detail. The Council identified concerns in connection with the choice of model used, its input and parameters. However, there is little evidence before me to support the concerns expressed. In my view, the appellant has set out detailed evidence concerning the modelling work undertaken, including a detailed justification for the choice of model and inputs.
15. This work has been used to test the impacts of the proposed development on the highway network. The evidence explains in detail the rationale for the development scenarios tested, including allowances for modal shift and a Medway City Estate travel plan which forms part of the proposal. The results demonstrate that between the different scenarios tested, northbound journey times along Anthony's Way would increase by between 40 and 44 seconds, southbound journey times along Anthony's Way would increase by between 34 and 36 seconds, westbound traffic on Vanguard Way would increase between 32 and 83 seconds and the maximum queue on Vanguard Way would be between +16-+26 vehicles. The Council expressed concerns regarding the assumptions and evidence used to support this assessment however, there is little evidence before me to support the concerns expressed. Taking into account the existing highways situation, the evidence demonstrates that although journey times would increase, this would not be to the detriment of the capacity and functioning of the highway network. As a result, I am unable to agree with the Council's assertion that the proposal would cause material harm to the safe and efficient operation of the highway network.

16. The appellant utilises a case study in an attempt to demonstrate the benefits of a site wide travel plan may deliver. I acknowledge that the case study example at Milton Park, Oxfordshire may possess different characteristics to the Medway City Estate. I also acknowledge that the initiatives used here include a shuttle bus. However, there are also other measures to encourage sustainable transport including a bike loan scheme, cycling initiatives and car sharing. I can see no reason why these measures could not be successfully implemented at the Medway City Estate. To my mind, the case study provides a useful tool to benchmark the potential benefits of an Estate wide travel plan on sustainable transport. Even if the Council's figure of a 2% reduction is deemed to be more realistic, the measures would still deliver worthwhile benefits which would assist in managing the flow of traffic in the area.
17. Technical Note 3 provides a sensitivity analysis to consider the effects of the development traffic on the Vanguard Way roundabout according to the food and non food retail uses proposed. In the case of linked trips, the proposal would provide for a variety of retail uses including a discount food retailer as well as non food retail units. Given the prominent location of the site and established employment area at the Medway City Estate, it would be reasonable to assume that a significant proportion of trips maybe linked trips and therefore not new journeys on the highway network. The appellant has made various assumptions on the potential for linked trips which varies dependent upon the use and the time of the week. Given that the site is adjacent to a McDonalds, Coop convenience store/ petrol filling station and acknowledging the employment land uses as part of the wider Medway City Estate, it is my view that these broad estimates for linked trips are reasonable.
18. Turning to consider other potential modes of transport other than the private car, there are bus stops located on Anthony's Way within walking distance of the appeal site. The southbound bus stop would be subject to upgrading and improvement as part of the appeal proposal. This would include a raised boarding platform to provide step free access to the bus. The frequency of the bus service varies and given the predominance of employment facilities in this location, offers limited weekend services. This is not unusual given the existing characteristics of the area. The site is also accessible on foot and by cycle. However, in the context of the land uses proposed, I would concur with the Council's view that these trips are likely to be minimal.
19. Taking all of the above into account, I conclude that the proposal would not be detrimental to the capacity or functioning of the public highway. As a result, there is no conflict with policy T1 of the Medway Local Plan, or the Framework.

Highways safety

20. It was explained to me that the concern in relation to highways safety was a general concern that if delays are increased along Anthony's Way approach to the Vanguard Way roundabout, drivers may take more risks in an attempt to jump the queue and the potential for accidents may increase as a result.
21. The proposal before me would introduce a signalised junction at the site access at Terrance Butler Avenue as well as at Enterprise Close. A signal-controlled pedestrian crossing would also be introduced as well as extending the pedestrian footway to provide greater connectivity to the bus stops. To my mind, these changes would present an improvement on the existing situation, providing a signalised control at the junction, dedicated crossing point and a

safer pedestrian route through the provision of an extended footpath. Taking into account these measures, I cannot agree that the appeal proposal would lead to an increased risk of accidents taking place.

22. As a result, I conclude that on the basis of the evidence presented to me, the development would not significantly add to the risk of road traffic accidents. There would be no conflict with part (ii) of policy T1 of the Medway Local Plan. There would also be no conflict with the Framework and in particular, paragraphs 108 and 109.

Other Matters

23. There is disagreement between the parties regarding the weight to be attached to the extant planning consent on the site. This extant permission covers a larger site area. It is for a significantly greater amount of retail floorspace which would be provided as a single unit only. It also includes off site highways improvements and the provision of a park and ride facility. Whilst acknowledging the existence of this extant consent, I have concluded the proposal complies with the development plan. In the circumstances of this appeal, the weight to be attached to the extant consent has no bearing on this matter.

Unilateral Undertaking

24. A signed Unilateral Undertaking has been submitted prior to the hearing. Following discussions which took place at the hearing, it was subsequently updated and signed to provide a clearer definition to the 'transport fee' within the document. This document makes provision for the payment of £75,000 towards the cost of a Medway City Estate Travel plan, the objective of which would be to promote non-car accessibility initiatives across the Medway City Estate. I have considered the documents in light of the advice contained within Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) as well as policy and guidance in relation to the use of planning obligations.
25. In these circumstances, I consider this obligation would be fairly and reasonably related to the development proposed and it would, as a result pass the statutory tests set out in Regulation 122 of the Community Infrastructure Regulations, 2010. I am satisfied that the obligation is directly related to the proposed development, fairly and reasonably related to it in scale and kind and necessary to make the development acceptable in planning terms. It would also accord with policy T14 of the Medway Local Plan which seeks to secure travel plans for all developments which require a transport assessment.

Conditions

26. A list of conditions was discussed with the main parties during the hearing and I have taken into account the comments made. I have also had regard to the conditions in light of the guidance contained within the Planning Practice Guidance. Where necessary, I have amended the wording in the interests of precision, clarity and enforceability.
27. I have imposed the standard conditions relating to time for the implementation and compliance with plans, in the interests of the proper planning of the area and for the avoidance of doubt. In the interests of the character and appearance of the area, I have also imposed a condition requiring samples for

all materials to be used externally to be submitted to and approved by the Council prior to development commencing. For the same reason, a condition relating to details of any external lighting has also been attached. Five conditions covering remediation work including the submission of a piling method statement as well as the preparation of a Remediation Strategy and closure report, Implementation Plan and Verification Plan are necessary in order for the development to comply with the requirements of the Geoenvironmental Assessment report.

28. A Construction Environmental Management Plan condition is also necessary to ensure that there is no adverse impact on the local highway network and local amenity during construction. Two conditions have been included relating to the submission of details regarding sustainable drainage and requiring a signed verification report to confirm that the Sustainable Drainage System has been constructed as per the agreed scheme and plans. These are both necessary to ensure that surface water is suitably managed at the site.
29. The provision and management of a retained buffer zone alongside the Whitewall Creek and the Receptor site is necessary as the site is adjacent to the Medway Marine Conservation Zone. Although there was disagreement between the parties regarding the final part of the policy concerning lighting, I have included this wording in order to ensure the integrity of the adjacent Conservation Zone is maintained.
30. A condition requiring details of historic interpretation boards to be submitted and approved by the Local Planning Authority is necessary and reasonable in light of the representation from Historic England. A further condition requiring the submission of an air quality mitigation assessment is necessary to ensure that the impacts of the development on air quality can be assessed.
31. Five additional conditions are proposed by the Council concerning retail matters. These cover restricting the use of unit 1 to a Limited Assortment Retailer, to restrict the range of goods which can be sold from units 2 to 4, to specify the total amount of retail floorspace permitted, to prevent the creation of additional floorspace within any of the units and to prevent the subdivision of units 1-3. All of these conditions are necessary and reasonable to protect the vitality and viability of designated nearby centres.
32. I have chosen not imposed a suggested condition which the Council described as a 'no-poaching' condition, the objective of this suggested condition would be to ensure that no retailers currently represented in Medway's town centres can relocate to the proposed development. I do not agree this condition would be either necessary, reasonable or enforceable.
33. In terms of highways and transport, a condition requiring a minimum of 10% of parking spaces to provide electric vehicle charging points is both necessary and reasonable in the interest of minimising vehicle emissions. I have also included a further condition to require the completion of the parking areas prior to the first occupation of the development hereby permitted. Finally, a condition requiring a signed S278 agreement covering off-site highways works to be completed prior to the first occupation of the development is also reasonable. These conditions are required in order to ensure the impact of the proposal on the free and safe flow of traffic on the public highway is acceptable.

Conclusion

34. I have concluded that the development would not be detrimental to the capacity or functioning of the public highway. I have also concluded that the proposal would not significantly add to the risk of road traffic accidents. As a result, there would be no conflict with policy T1 of the Medway Local Plan. For the same reasons, there would be no conflict with the Framework and in particular, paragraphs 108 and 109.
35. As a result, the proposal would accord with the policy requirements of the development plan as well as the guidance contained within the Framework. As a consequence, the appeal should be allowed.

Christa Masters

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers M1272 PL [0] 50, M1272 PL [0] 51 (Rev A) , M1272 PL [0] 52 (Rev A), M1272 PL [0] 53 (Rev A), M1272 PL [0] 54, M1272 PL [0] 55, M1272 PL [0] 56, M1272 PL [0] 57, M1272 PL [0] 58, M1272 PL [0] 59, M1272 PL [0] 60, M1272 PL [0] 61, M1272 PL [0] 62, M1272 PL [0] 63, M1272 PL [0] 64, M1272 PL [0] 65, M1272 PL [0] 66, M1272 PL [0] 67, CSG001 TOP 01 (Rev A), 40103-E-900-00- Rev P2, W151860/A/06b Rev E.
3. No development above slab level shall take place until details and samples of all materials to be used externally have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
4. Prior to commencement of the development (not including remediation works and material movement), all points detailed in Chapters 5 to 7 of the Geoenvironmental Assessment Report compiled by CSG Consulting Engineering (dated May 2018 reference 886-R-01) submitted with this application, shall be implemented. This includes the following key points:
 - i. The site has been classified as Gas Situation 2. The applicant will need to provide details of the gas protection measures which are to be installed in the proposed buildings to the Local Planning Authority for approval prior to development works commencing at the site.
 - ii. A piling method statement will need to be submitted to the Local Planning Authority for approval prior to piling works commencing at the site.
5. Prior to commencement of any works, a Remediation Strategy, Implementation Plan and Verification Plan should be submitted to and approved by the Local Planning Authority.
6. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared which is subject to the approval in writing of the Local Planning Authority.
7. Following completion of the measures identified in the Approved Remediation Strategy, a Verification Report providing details of the data that will be collected in order to demonstrate that the remediation works are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action must be prepared, which is subject to the approval in writing of the Local

Planning Authority in accordance with condition 5.

8. Prior to occupation of the development hereby approved a Remediation Closure Report should be submitted to the local planning authority for approval which details the remediation which has been undertaken at the site.
9. Prior to the commencement of the development hereby permitted, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall include amongst other matters details of: noise and vibration controls including screening/mitigation and hours of construction working; dust control measures including wheel cleaning/chassis cleaning facilities; site illumination including any cowls to be fitted to ensure that light spillage on sensitive areas is avoided. The construction works shall thereafter be carried out at all times in accordance with the approved Construction Environmental Management Plan, unless any variations are otherwise first submitted to and approved in writing by the Local Planning Authority.
10. No development shall take place until a scheme showing details of the disposal of surface water, based on sustainable drainage principles, including details of the design, phasing (where appropriate) implementation, maintenance and management of the surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. Those details shall include i. a timetable for its implementation, and ii. a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
11. Prior to occupation of the development, a signed verification report carried out by a qualified drainage engineer (or equivalent) must be submitted to and approved by the Local Planning Authority to confirm that the Sustainable Drainage System has been constructed as per the agreed scheme and plans.
12. No development shall take place until a scheme for the provision and management of the retained buffer zone alongside the Whitewall Creek and the Receptor Site shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the Local Planning Authority. The buffer zone scheme shall be free from built development including lighting, and formal landscaping; and could form a vital part of green infrastructure provision. The schemes shall include:
 - ☐ i. plans showing the extent and layout of the buffer zone.
 - ☐ ii. details of the species to be planted, that must be native and of local provenance, suitable for the Creekside environment.
 - ☐ iii. details demonstrating how the buffer zone will be protected during development. A management plan detailing how the area will be managed in perpetuity, including litter and vegetation management.

- iv. there should be no lighting adjacent to the creek, or in the byelaw margin.
 - v. proposed lighting for any roads should demonstrate how light-spill towards the watercourse will be avoided or minimized so that there will be no significant ecological impact.
13. Prior to occupation, details of historic interpretation boards shall be submitted and approved in writing by the local planning authority and implemented as approved.
14. Prior to occupation, details of external lighting shall be submitted to and approved in writing by the Local Planning Authority and implemented as approved.
15. Prior to construction, details of an air quality mitigation assessment shall be submitted to and approved by the Local Planning Authority and implemented as approved.
16. Prior to occupation, a minimum 10% of parking spaces shall be provided with Electric Vehicle charge points. Details of the type, phasing and location for the electric vehicle charging points shall be submitted to and approved by the Local Planning Authority and implemented as approved.
17. Unit 1 hereby approved, as shown on plan M1272 PL [0] 51 (Rev A), shall only be used as a Limited Assortment Discounter (LAD) store of no more than 1,971sq.m GIA. This is defined as primarily a food store which is characterised by: a dominance of store labels with few other national brands; selling a limited range of products; and limited ancillary non-food ranges promoted through 'weekly specials'. No use other than a LAD, as defined above, shall occupy the premises, including any other purpose in Use Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
18. Notwithstanding the provisions of the Town and Country (Use Classes) Amendment (England) Order 2015 (or any Order amending, revoking or re-enacting that Order), Units 2 to 4 shall not be used for the sale of fashion, footwear or sports goods unless such products are ancillary to the main product range and no more than 20% of the net sales floorspace shall be used for the sale of convenience goods.
19. Notwithstanding the provisions of the Town and Country (Use Classes) Amendment (England) Order 2015 (or any Order amending, revoking or re-enacting that Order), Units 3 and 4 (as shown on plan M1272 PL [0] 51 (Rev A)) shall only be used for the sale of toys and bulky comparison goods (DIY, furniture, floor-coverings or electrical goods).
20. The total A1 retail floorspace shall not exceed 5,237sqm GIA. Units 1-3 shall at no time be subdivided into smaller units with a floorspace of less than 696m² (GIA) without the prior consent of the Local Planning Authority.
21. Notwithstanding the provisions of the Town and Country (Use Classes) Amendment (England) Order 2015 (or any Order amending, revoking or

re-enacting that Order), no additional internal floorspace (including, but not limited to, the creation of mezzanine floorspace) shall be created within Units 1-4 hereby approved unless otherwise agreed by the Local Planning Authority.

22. Prior to the commencement of development, a signed S278 agreement covering off-site highways works, including provision of pavements as detailed in Vectos drawing W151860/A/06b Rev E and bus stop shall be submitted to the Local Planning Authority. The works specified within the S278 agreement shall be completed prior to the first occupation of the development.
23. Prior to the first occupation of the development, the parking areas as shown on plan M1272 PL [0] 51 (Rev A) shall be completed and thereafter permanently retained for parking and manoeuvring purposes.

APPERANCES

FOR THE LOCAL PLANNING AUTHORITY:

Tim Chapman	Major Projects Team, Medway Council
Mike Hibbert	TTHC Transport Consultants

FOR THE APPELLANTS:

Roger Birtles	Simply Planning
Matt Thomas	Vectos Transport and Highways
Chris Evans	Vectos Transport and Highways
Colin Thacker	Location 3 Properties
Richard Moon	Location 3 Properties

INTERESTED PERSONS:

Mr Surana	VT Group
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DOCUMENTS SUBMITTED AT THE HEARING

1. Local Model Validation Report, June 2019
2. Development Performance Assessment, July 2019
3. Updated and signed SOCG in relation to Highways Matters and associated appendices
4. Email correspondence in connection with the A289 and Medway City Estate
5. Proposed wording for a condition in relation to S278 works associated with the proposed development.