



Appeal Decision

Hearing Held on 4 September 2019

Site visit made on 4 September 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2019

Appeal Ref: APP/R4408/W/19/3228051

Peel Centre, Harborough Hill Road, Barnsley S71 1JE

- 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 Peel Property (Investments) Limited against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2018/1308, dated 11 October 2018, was refused by notice dated 11 February 2019.
 - The development proposed is erection of Use Class A3/A5 drive-thru unit measuring 167 sqm and associated physical works to site layout .
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Decision

1. The appeal is allowed and planning permission is granted for erection of Use Class A3/A5 drive-thru unit measuring 167 sqm and associated physical works to site layout, at Peel Centre, Harborough Hill Road, Barnsley S71 1JE, in accordance with the terms of the application Ref 2018/1308, dated 11 October 2018, and subject to the conditions in the attached schedule.

Procedural Matter

2. At the start of the Hearing, there was uncertainty as to whether the Council had correctly notified relevant parties of the time, date and venue of the Hearing. However, it was clarified that as no party had responded to the Council's letter of notification of the appeal, there were no parties to address the subsequent letter to. Given that no representations were received at either the application or appeal stage, I am satisfied that no one was prejudiced by this nor would anyone be prejudiced by my proceeding to make a decision on the appeal.

Main Issues

3. The main issues in this case are the effect of the proposal on:
 - the role, character and function of the Peel Centre Retail Park and;
 - the vitality and viability of Barnsley Town Centre.

Reasons

Policy context

4. The development plan for the area is the Barnsley Local Plan (adopted 3 January 2019) (the Local Plan) which was adopted during the course of the

application, replacing the remaining saved policies from the Unitary Development Plan (adopted 2000) and the Core Strategy (adopted 2011).

5. Two Local Plan policies are relevant to the appeal, these being TC1 and TC4. Policy TC1 sets out the hierarchy of town, district and local centres within the Borough and that a sequential approach will be used to assess proposals for new retail and town centre development to achieve the spatial strategy for the Borough. Edge-of-centre and out-of-centre development will only be allowed where it meets requirements of the National Planning Policy Framework (the Framework).
6. Policy TC4 relates specifically to retail parks and therefore applies to the appeal site. It permits retail warehousing and 'uses other than retail warehousing [...] where the role, character and function of the retail park will not be adversely affected.' The policy goes on to state that except where justified, planning permission on these retail parks will be subject to conditions to limit the minimum size of units to 920 square metres (sqm), and the type of goods sold to bulky comparison goods.

Role, character and function of the retail park

7. The Peel Centre is a retail park containing some 9 large format retail warehousing units, 2 of which are subdivided making a total of 13 units, and a large surface car park. The tenants include several national retailers. Recently, a relaxation of planning conditions limiting the type of retail permitted on the site has brought in non-bulky goods and food retailers including The Food Warehouse and Quality Save. A gym operates from one of the units and there are also two food and drink facilities consisting of a Subway sandwich shop and a Pizza Hut restaurant. It is common ground that the proposal is in an out-of-centre location. The proposal would see a standalone unit within the A3/A5 use classes erected on part of the car park, offering drive-thru facilities. The prospective occupant is the multi-national coffee chain, Starbucks.
8. The Council argues that the proposal would not accord with policy TC4 as it would create a unit of less than 920 sqm and it would adversely affect the role, character and function of the retail park. However, the supporting text to the policy, at Paragraph 15.30, states that planning permission for retail warehousing (my emphasis) will be subject to conditions to control the character of the development, the size of individual units and the range and type of goods sold. The reason given for this is that otherwise there is potential for a wider range of comparison goods to be sold which may negatively affect the vitality and viability of defined centres.
9. I have had regard to the evidence put to me, including the comments of the Inspector who conducted the examination of the Local Plan. However, it is an established principle that policies should be interpreted objectively in accordance with the language used and read in their proper context. It is clear to me, on a plain reading of the policy, that the conditions listed in the two bullet points are applicable to permissions for retail warehousing. This is evident from the restriction on the type of goods to be sold, which can only logically apply to proposals for retail warehousing, and not food and drink uses such as in the present proposal. Moreover, applying a minimum threshold of 920 sqm to non-retail warehousing uses would be perverse if the overall aim of the policy is to ensure the primary function remains as retail warehousing as it would result in unnecessary loss or a reduced percentage of retail space.

10. At the Hearing, discussion focused on the second sentence of the policy, which states: 'Uses other than retail warehousing will be allowed where the role, character and function of the retail park will not be adversely affected.' The Council argues that this sentence permits *changes of use* to other than retail warehousing within existing buildings, but not such uses within new buildings. However, there is nothing explicit either in the policy itself or the supporting text which supports this position. In simple terms, the proposal, being for a food and drink use, would fall within 'uses other than retail warehouses', and so would be supported by Policy TC4 subject to it not adversely affecting the role, character and function of the retail park.
11. The appellant advances that the proposal would form a complimentary use to the retail park, serving the needs of customers already visiting the Peel Centre. In support of this, the appellant relies on a survey from 2012 where 50% of respondents were positive towards the provision of additional food and drink facilities at the retail park. Whilst this evidence is limited and somewhat dated, it is reasonable to consider that the presence of an additional food and drink option within the retail park may draw additional customers and increase footfall to the other units.
12. The Council acknowledges that it has relaxed conditions originally imposed when the retail park was permitted, to allow non-food retail use with up to 30% of floorspace for food retail use. In my view, this represents an acceptance by the Council that such an alteration to the nature of the uses at the retail park would not adversely affect its role, character and function. Nevertheless, the Council argues that the proposal would have an adverse effect by introducing further non-retail warehousing use, in a unit of a size which would never be able to accommodate retail warehousing. However, the proposed use would not result in the loss of any retail warehousing space, nor would it impede or undermine the operation of any existing retail unit. Whilst there would be some loss of car parking, it has not been argued that this would harm the functioning of the retail park. Having seen the extent of parking available, I am satisfied no harm would arise in this respect.
13. Given that the extant planning permissions could see sizeable parts of one or more of the existing units given over to food retail, I see no tangible difference to the overall role, character and function of the retail park in having a food and drink use, albeit one with seating areas and a drive thru, located in a standalone building as opposed to inside an existing building. In terms of cumulative impact, at 167 sqm, the proposal would increase the total floorspace of the retail park by just over 1%, whilst the percentage of floorspace occupied by food and drink uses would increase from 3.5% to 4.7% (429 sqm to 596 sqm). This amount of development would be insignificant in the overall context of the retail park, and would have a very limited effect on its overall role, character and function.
14. Moreover, I saw and heard evidence of recent vacancies at the retail park following the closures nationwide of Maplin, Poundworld and Bathstore and that the appellant has a commercial need to ensure the vitality of the retail park. I recognise that such large closures have become more common in recent years, and provides some context for the Council's relaxation of the conditions to encourage new tenants and increase business. The presence of several vacant units, which I was told have been unoccupied for between 2 and 18 months with limited interest even with the added flexibility of the conditions, has a

more significant effect on the role, character and function of the retail park than would the much smaller proposed A3/A5 unit. Though not conclusive, I concur with the appellant that the additional draw of a café on the retail park may have a positive effect in attracting new retailers to the vacant units which would add to the overall vitality and viability of the retail park.

15. For the above reasons, I conclude that the proposed A3/A5 use would be an acceptable use in the retail park and would not harm its role, character or function and so would accord with Policy TC4 of the Local Plan.

Vitality and viability of Barnsley Town Centre

16. It is common ground between the main parties that Policy TC4, being a specific policy for retail parks, is of greater relevance to the proposal than the more general strategy for locating town centre uses as outlined in Policy TC1. The parties agree that in the case of the proposal complying with Policy TC4, it would not fall to be further assessed against Policy TC1. Whilst I acknowledge the parties' agreement on this, Policy TC1 is nevertheless part of the development plan and it is therefore necessary for me to consider the effect of the proposal on the vitality and viability of the town centre, both as set out in Policy TC1 and having regard to the Framework which requires local planning authorities to apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan.
17. In terms of the requirement for a sequential test, the appellant argues that the appeal site is 'locationally specific' in that it would meet the need for a complementary food and drink offer on the retail park, and being a drive thru, it is unsuited to a town centre location. However, drive thru restaurants are specifically listed as being main town centre uses in the glossary to the Framework, though I recognise that given the appellant's aim of adding to the offer on the retail park specifically, other locations would not achieve this. That said, the appellant's evidence of a specific need for a food and drink facility in this location is limited.
18. However, the Council has not identified any other sites which it considers would be sequentially preferable for the proposal, but nevertheless argues that the lack of a sequential test would lead to 'limited harm' to the vitality and viability of the town centre. Upon questioning the Council did not provide substantive evidence of what form this harm would take. The retail impact of the retail park on the town centre would no doubt have occurred when it opened, and has been considered again recently through the applications to relax the conditions. As such, the retail park already has a role and influence in terms of the retail offer in the town and commands a certain draw of customers to retailers which are often found outside the town centre due to the size requirements of their premises selling bulky goods or requiring parking. In this respect, I consider that in this case it is reasonable to take the view that the retail park offers a different form of retail offer to the town centre and that the two are not therefore in direct competition.
19. The above was apparent when I walked from the town centre to the appeal site and saw that it is not readily accessible on foot due to the indirect and hilly route which has to be followed including crossing a busy dual carriageway. Such factors mean that the retail park is likely to be mainly accessed by people driving in private motor vehicles, and is unlikely to draw large numbers of

pedestrians from the town centre. The proposal would, however, appeal to those already intent on visiting the retail park or other edge-of-centre or out-of-centre locations by private motor vehicle, which offers some basis for the inclusion of a drive thru facility. Therefore, whilst some evidence of linked trips between the retail park and town centre was put to me, my observations lead me to consider that the retail park is sufficiently distant from the town centre and its offer is not a direct threat to its vitality and viability. Given its location and scale, the A3/A5 unit would not add so significantly to the retail park offer that substantial numbers of people would be drawn away from the town centre.

20. The above view was reinforced during a walk through the town centre, which I saw was busy and vibrant with few vacant units visible and a number of cafés. In addition, I saw the significant 'Glassworks' re-development taking place in the centre, which when complete would offer considerable new food, leisure and retail facilities. I saw the indoor market forming part of this development was already complete and open, including café outlets. My impression, therefore, was of a healthy town centre which stands to improve further in the near future.
21. Whilst the Council raises concerns that the retail park could, over time, evolve to compete with the town centre as a result of proposals such as that before me, there is little to suggest this is a realistic prospect, given their relative scales, the much broader offer in the town centre, and the locational, physical and conditional limitations of the retail park. In any event, I have determined this appeal on its individual planning merits and taking into account the circumstances that exist now.
22. Given the above factors, I find that the proposed A3/A5 unit would not be of a scale whereby it would cause any significant harm to the vitality and viability of the town centre.
23. Therefore, and notwithstanding the absence of a detailed sequential test, I conclude that the proposal would accord with the town centre vitality and viability aims of Policy TC1 of the Local Plan and the Framework.

Other Matters

24. No objection is raised by the Council to the design, layout, highway impacts or effect on living conditions of nearby occupants, and nothing I heard at the Hearing leads me to different views on any of these issues.

Conditions

25. In addition to the standard three year time limit condition, a condition specifying the approved plans is necessary to provide certainty. A condition requiring provision of appropriate broadband facilities is necessary to meet the Local Plan requirement for development to be supported by suitable infrastructure.
26. Conditions for completion of parking and manoeuvring facilities and submission and adherence to a servicing management plan are necessary in the interests of highway safety, whilst a condition for the provision of cycle bays and electric vehicle charging points is necessary to promote sustainable transport.
27. A condition is also necessary to require the building to achieve sustainable design and construction standards in order to minimise resource and energy

consumption. This condition is pre-commencement as a later trigger would negate the possibility of sustainable construction methods being incorporated into the development. That the condition is pre-commencement has been agreed by the appellant.

Conclusion

28. For the reasons given, and taking all relevant matters into consideration, the proposal would accord with the development plan taken as a whole and other material considerations do not indicate a decision should be taken at variance with this. I conclude that the appeal should be allowed.

K Savage

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 approved shall be carried out strictly in accordance with the following plans and specifications as approved unless required by any other conditions in this permission: MH1124-01 REV A Site Location Plan; MH1124-02 REV A Existing Site Plan; MH1124-03 REV B Proposed Site Plan; MH1124-04 REV B Proposed ground floor plan and elevations; MH1124 Proposed External Materials.
- 3) The parking/manoeuvring facilities, indicated on the approved plans, shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.
- 4) Prior to the development being brought into use details of measures to facilitate the provision of an appropriate broadband service for the development hereby permitted, including a timescale for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) Prior to occupation of the development, 8 no. cycle bays and 2 no. electric vehicle charging points shall be provided as set out in Section 3.2 of the Transport Statement by Traffic, Transport and Highway Consultancy, dated September 2018. Thereafter the sustainable transport facilities shall be retained for the duration of the development.
- 6) Prior to the commencement of the development, a preliminary assessment of the buildings BREEAM rating shall be submitted for approval in writing to the Local Planning Authority. The assessment shall:
 - a) Identify what measures shall be used to achieve BREEAM standard of 'very good' or equivalent;
 - b) Where the BREEAM standard of 'very good' or equivalent standard cannot reasonably be achieved the assessment shall justify why not; and
 - c) Shall identify what standard shall be achieved.

Upon completion of the development, a certificate shall be provided to the Local Planning Authority demonstrating that the agreed standard has been achieved and the measures provided to achieve the standard shall be retained as operational thereafter.
- 7) The development shall not be brought into use until a servicing management plan has been submitted to and approved in writing by the Local Planning Authority. Once approved it shall be strictly adhered to at all times. The plan shall include for the management of all delivery vehicles, customers vehicles, pedestrians, and the use of banksmen if deemed necessary, and shall provide a regular monitoring regime and a system for identifying and correcting any issues.

APPEARANCES

For the appellant:

Paul Tucker QC	of King's Chambers, instructed by Savills Planning
Gareth Finch	Peel
Peter Whittingham	Savills
Roger Wheeldon	Retail Development Director, Peel
Leah Taylor	Development Manager, Peel

For the Local Planning Authority:

Elaine Ward	Senior Planning Officer
Helen Willows	Planning Officer
Matthew Sorby	Graduate Planner (Observing)

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of Council's letter of notification of time, date and venue of the appeal (dated 19 August 2019)

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Copy of conditions agreed between the main parties