



Appeal Decision

Hearing Held on 4 November 2019

Site visit made on 4 November 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2020

Appeal Ref: APP/T3725/W/19/3228191

Asda Supermarket, Chesterton Drive, Leamington Spa, Warwickshire CV31 1YD

- 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 McLagan Investments Ltd against the decision of Warwick District Council.
 - The application Ref W/19/0209, dated 12 February 2019, was refused by notice dated 9 April 2019.
 - The development proposed is a replacement external pod to be used for A1 (retail) / A2 (financial & professional services).
-

Decision

1. The appeal is allowed and planning permission is granted for a replacement external pod to be used for A1 (retail)/A2 (financial & professional services) at Asda Supermarket, Chesterton Drive, Leamington Spa, Warwickshire CV31 1YD, in accordance with the terms of the application Ref W/19/0209, dated 12 February 2019, subject to the conditions set out in the attached Schedule.

Main Issue

2. The main issue is the effect of the development on the vitality and viability of Leamington Spa town centre and its Local Centres.

Procedural Matters

3. I have taken the description of development from the Appeal Form, although I have removed the reference to 'Timpson'. This following discussion and agreement at the Hearing, as this reference is not necessary to describe the development proposed.
4. The advertisements illustrated on the proposed plans have been granted consent separately by Warwick District Council under reference W/19/0210. This consent related to a proposal described as "*Proposed display of signage for Timpson pod - 3no. internally illuminated fascia and 4no. non-illuminated panel signs, plus manifestation vinyls.*"

Reasons

5. The proposed retail pod would be positioned near the entrance to a large Asda supermarket which is on the eastern side of Leamington Spa. It would replace a covered retail area (trade canopy) that exists to the front of the supermarket

which currently sells gardening equipment and other similar products, as part of Asda.

6. The proposed pod is for the retail company Timpson to use, with its typical use being for dry cleaning, key cutting, shoe repairs, watch repairs and engraving, for example. The pod would be approximately 6.55m long, 2.65m wide and 2.48m high. It would have a floor area of about 17sqm.
7. Other than the supermarket, the area is primarily residential. The site is approximately 1.5km from the Leamington Spa town centre. It is also set a significant distance from any of the local retail centres. In this regard, Warwick District Local Plan 2011 - 2029 policy TC2 directs new retail development to the town centres or other retail centres. However, the policy does allow for out of centre retail development, if it can be demonstrated that there is no retail centre location available for the proposed development.
8. To address this, the appellant has submitted a sequential test (ST). This was conducted in February 2019. The proposed pod is relatively small, but the ST considered available units if they were +/- 25% of floor area of the proposed pod. This would therefore be a range of approximately 13sqm to 21sqm.
9. Considering the town centre and local centres the ST identified over 30 units available at that time. Most were not suitable as they were too large (significantly over 21sqm). There was one unit at 122 Regent Street, which would be close to the existing two Timpson stores in the town centre but was of a suitable size. However, it is understood this is now not on the market.
10. Given the particularly small size of the pod proposed, even with the 25% extra floor area included in the ST search, most units will be larger than this. However, I do regard the range used in the search as reasonable as this reflects the type of retail development proposed. A much larger unit would be too different to the retail unit proposed. Therefore, in terms of size range, I would regard the ST and appellant approach as having a suitable level of flexibility.
11. The car park at Chandos Street was considered, but this was part of a development site which would be unlikely to be able to host a development such as the pod proposed until 2022, whereas the appellant is looking to have their retail unit operational much before then. Given the circumstances, I would agree that this site should be discounted.
12. There was also the Co-Op store on Clemens Street. Having seen this site I would agree that it is constrained and there is no clear location where a retail pod could safely be positioned. I agree this site should be discounted.
13. With the Regent Street site not available then for the area the ST has covered it is reasonable to conclude that there are no sequentially preferable sites.
14. The Council have argued that more of the local centres within Leamington Spa should have been considered, not just the ones close to the site. Nonetheless, the Council has conducted its own search prior to the Hearing and confirmed that it did not find any suitable alternative sites available in the Local Centres. As such, I am satisfied that there are no available sequentially preferable sites within any of the Local Centres the Council state should be covered by a search.

15. The Council did suggest there is the possibility of splitting up some of the larger units, but this could be a complicated process which the owner may not be keen to do, or it may not be logistically feasible. Therefore, if the unit is too large then in this case, considering the small scale of the retail unit proposed, I do not regard it as being necessary to investigate splitting existing units as part of the ST, as this could be a protracted and complicated process to find out if this is feasible.
16. However, at the Hearing the Council presented a number of other sites. Whilst most would be too large, there was an available unit at 31 Regents Grove in Leamington Spa centre. As this was only submitted at the Hearing it could not be assessed whether the size and layout of the unit at Regents Grove would be fully sufficient for that proposed at the Asda store. However, the unit at Regent Grove is of a suitable size to fit with the parameters of the search, although it is actually about 2.5sqm smaller than the proposed pod. Whilst this is a small amount, the proposed pod would already be small and so a unit smaller again may not be feasible for the business.
17. The appellant also makes the point that the proposed pod is for a Timpson unit specifically and is designed to meet their requirements, along with taking advantage of the footfall of the supermarket. The unit at Regent Grove would not likely have the benefit of such footfall and also would be in direct competition of two other Timpson stores which are already established in Leamington Spa centre.
18. Although competition is not usually a component of sequential tests, the use of the unit at Regent Grove as a Timpson store is unlikely to be suitable or a reasonable prospect for this business as it would be in competition with its own already established town centre stores. Therefore, if there was an available unit in the town centre near the existing Timpson stores then it is unlikely that the company would seek to take up the lease on one of these units, even if sequentially preferable.
19. Notwithstanding the above, the scale of the unit is particularly small. Therefore, from the evidence I have seen and heard, I am not satisfied that the proposed unit would have any discernible impact to the vitality of established retail centres, especially considering two shops are already occupied by Timpson in the town centre.
20. The supporting text to policy TC2 explains that it is important to maintain the shopping function of the town centres and to promote sustainable patterns of development. To my mind, the proposal would not be detrimental to the retail function of the town or local centres. As its proposed location is based on taking advantage of existing footfall at Asda supermarket, it is unlikely to result in a discernible increase in additional traffic to and from this site or contribute to an unsustainable pattern of development.
21. Therefore, the proposed retail unit would not be contrary to the general aims of policy TC2 of the Warwick District Local Plan in that it would maintain the shopping function of the town retail centres and would not in itself result in the promotion of unsustainable patterns of development. Therefore, the proposal would not harm the vitality or viability of the retail centres of Leamington Spa.

Condition Reasons

22. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the National Planning Policy Framework. The conditions I have included from the recommended list have been subject to some alterations to improve clarity and ensure consistency with the Framework and PPG.
23. I have attached the standard time limit condition and a plans condition as this provides certainty.
24. A condition was recommended and agreed between the parties that would set out the specific uses that the proposed pod could be used for, in line with that described in the appellant's submitted information. However, I do not regard it as necessary for such a restrictive condition on the retail function of the pod and instead have included a condition that simply restricts the use to A1 and A2 only. Considering the small scale of the pod I do not consider it necessary to restrict the retail use further to make the development acceptable in planning terms. A variation of the retail function of the pod within A1 or A2 use class should not result in any significant impact to the retail centres of the town.

Conclusion

25. For the reasons given above, the appeal should be allowed subject to the following conditions.

S. Rennie

INSPECTOR

Schedule – 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 carried out in accordance with the following approved plans: Asda Slim Pod 6650 – Premier ASP3-6.65m XXXXX; and PL_01 – Site Location Plan.
- 3) The unit shall not be used for any purpose other than purposes within Classes A1 and A2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

APPEARANCES

FOR THE APPELLANT:

Rebecca Dennis

Pegasus Group – Agent

Kate Lowe

Pegasus Group – Agent

FOR THE COUNCIL:

Rob Young

Planning Officer

Helena Obremski

Senior Planning Officer

ITEMS SUBMITTED AT THE HEARING:

1. Selection of current vacant retail units within Leamington Spa town centre, submitted by the Council.