
Appeal Decision

Site visit made on 12 March 2020

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2020

Appeal Ref: APP/V4630/W/19/3238554

Jerome Retail Park, Midland Road, Walsall WS1 3QB

- 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 BNY Mellon Trust & Depository (UK) Ltd against Walsall Metropolitan Borough Council.
 - The application Ref 19/0139, is dated 25 January 2019.
 - The development proposed is the erection of a Class A1 retail unit.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a Class A1 retail unit at Jerome Retail Park, Midland Road, Walsall WS1 3QB in accordance with the terms of the application, Ref 19/0139, is dated 25 January 2019, subject to the conditions in the attached schedule.

Procedural Matter

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. I have had regard to the Council's substantive points, and the appellant company's reply in reaching my decision.

Main Issue

3. The main issue is the effect of the proposed development on the vitality and viability of the Primary Shopping Area (PSA) of Walsall Town Centre.

Reasons

4. The appeal site lies within Jerome Retail Park. The Retail Park is in Walsall Town Centre, but just outside the PSA. The Retail Park contains several existing units, which are primarily used for retail, together with pay and display car parking facilities. Access is from Bridgeman Street. Midland Road extends to the rear of the Retail Park, but it provides access for servicing, deliveries and waste storage. The PSA is a short distance away to the north and accessible on foot using the pedestrian crossing points on Bridgeman Street. Train and bus services are nearby and pedestrian footways provide connections to them.
5. The appeal site is an open parcel of land between two units and enclosed by metal fencing. A previous planning application¹ refused by the Council proposed a flexible retail consent for either a non-food (comparison goods) or food (convenience goods) unit. No retailer has been secured by the appellant company to occupy the proposed unit, but they propose a restriction to the Class A1 use to bulky goods as a way of responding to the Council's concerns.

¹ Council Ref: 18/0671

To achieve this, a planning condition setting out the scope of such operations is proposed by the appellant company. I shall turn to this shortly.

6. The proposal is a main town centre use, having regard to saved Policy S1 of the Walsall Unitary Development Plan (UDP), Policy CEN7 of the Black Country Core Strategy (BCCS) and the National Planning Policy Framework (the Framework). Moreover, as the site is accessible and well connected to, and up to 300 metres from the PSA, the site is for retail purposes, having regard to the Framework, an edge of centre site.
7. Saved UDP Policy S7 sets out three tests to be satisfied for development proposals in edge of centre locations. In terms of the first of those, there is no dispute that there is a limited provision of bulky good retailers in the Town Centre. This includes the PSA. The proposed unit has a floor area of around 891m². The second test relates to the sequential approach, with the third relating to the economic impact on the vitality and viability of any existing Town, District or Local Centre (within or outside the Borough).
8. Noting BCCS policies CEN3 and CEN7, the proposal will only be considered favourably if the retail impact assessments contained in the most recent national guidance are satisfied, or the requirements of BCCS Policy CEN6 are satisfied. Framework paragraph 86 advises that main town centre uses should be located in town centres, and then in edge of centre locations. Paragraph 87 goes on to say that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
9. Policy AAPS1 of The Walsall Town Centre Area Action Plan (AAP) seeks to concentrate new retail floor space within or immediately adjacent to the PSA boundary, and only permit retail development away from the PSA where it can be demonstrated that there are no suitable development site to vacant premises within or immediately adjacent to it. AAP Policy AAPS2 goes on to say that convenience retailing and bulky goods will, where possible, be located in the PSA in accordance with the sequential approach in BCCS Policy CEN7 and saved UDP Policy S7. Where retailing cannot be accommodated within or immediately adjacent to the PSA the Council will expect a list of sites to be considered as part of the sequential assessment. Jerome Retail Park is on that list. Any edge of centre proposal will be expected to be link directly to active frontages in the PSA; or if not possible, to improve linkages functionally and visually to the PSA; and show there is no significant adverse impact on the vitality and viability of the town centre and planned investment for its future (as in accordance with BCCS Policies CEN3 and CEN7).
10. The appellant company assessed vacant sites within the PSA and updated their assessment in February 2020. Many of the sites assessed are not suitable, and it seems that some are also unavailable. Before I focus on the evidence about the disputed sites, I am mindful of the suggested planning condition to restrict the use to bulky goods. Such a planning condition could be drafted to clearly set out the scope of the goods that could be sold to enable any reasonable reader to be able to understand, and subsequently enforce the condition as it would be practical to detect a contravention. The condition suggested by the appellant company is wide-ranging and would also allow for the sale of goods that are not of a large physical nature. The Council points to a handful of

operators within the PSA who sell some bulky items, but this is not the main thrust of their business. There is some cross-over between them and the items that could be sold if I were minded to impose the suggested planning condition. However, the Council do not dispute the appellant company's doubts about the ability of these retailers being able to operate within the scope of the suggested bulky goods condition. I have no reason to form a different view.

11. While the majority of the 6 units currently vacant at St. Matthews Quarter may be individually smaller than the proposed floor area, the Planning Practice Guidance (the Guidance) is clear that the precise scale and form of development being proposed does not need to be demonstrated for potential Town Centre sites. Some of the units could potentially be combined in some form or the scale of the proposal could be reduced. There is also no substantive evidence before me to suggest that internal alterations could not be made to each of the units, whether used individually or together, to allow trolleys to be available for customer use. The service yard is shared with other units, which prevents external storage. Even so, a similar arrangement is proposed at the appeal site and there is no substantive evidence to support the appellant company's view about the service yard at St. Matthews Quarter.
12. That said, each of the units would not allow customer collections by car given that the units front a pedestrianised street. Customers do often collect goods from retailers, including those of bulky good retailers. However, there needs to be flexibility in the format of the proposal, and while a 'click and collect' facility may attract more businesses, not every bulky goods operator may operate in this way. Some of the goods listed in the suggested planning condition could be moved from the point of sale to home on foot, but the lack of dedicated customer parking would mean that moving large items would be impractical. As such, the units at St. Matthews Quarter would not be suitable.
13. Internal modifications could be made to ensure that the former Poundworld unit at 41a Park Place is accessible, capable of providing customers with trolleys, and can offer suitable staff facilities. Furthermore, the pillars, ceiling height and the ability to provide a mezzanine floor are not, in my view, undue restrictions in the context of demonstrating flexibility. This unit does not offer dedicated customer parking next to the unit. Moreover, the Council does not contend that the unit is unable to accommodate HGV's. This would be practical and necessary for items such as DIY products, furniture, carpets and floor coverings and home improvement products. Thus, even if storage space issues could be overcome, the unit would not be suitable for a bulky good operator.
14. I have no reason to disagree with the main parties about the units at the former Marks and Spencer's (53 Park Street), The Saddlers Centre (Park Street) and the former BHS Store (71-75 Park Street).
15. The Council suggest that Crown Wharf Retail Park, an edge of centre site and also on the list set out in AAP Policy AAPS2, should also be considered. While unit 5 may have a suitable floorspace and be available, the Guidance explains that preference should be given to accessible sites that are well connected to the Town Centre. Jerome Retail Park is more accessible than Crown Wharf Retail Park and it offers safe, direct and attractive pedestrian links to the PSA. Based on the evidence before me there are no suitable and available sites within the PSA. It follows that the sequential test is passed despite the Council's point about using existing units first before creating new units.

16. Due to the scale of the proposal, BCCS Policy CEN3, requires the impact on the centre to be considered. Walsall has, and continues to experience a level of retail vacancy significantly above the national average. Work as part of the AAP explained that *"even relatively small adverse impacts on Walsall Town Centre arising from competing retail development, individually or cumulatively, may have significant effects on the decisions of retailers, developers and investors and further reduce the town's health and attractiveness."* Little seemingly has changed in recent years.
17. I note the Council's concerns about the proposal having the potential to draw trade away from the PSA and existing businesses. The appellant company indicates that, the effect in respect of comparison goods retailers within the PSA would be around 1.6%. However, this is not a like for like comparison as there are no bulky goods operators within the PSA. So, even if some impact is felt, it would not be as great as the figure presented for convenience goods retailers. Linked trips could also be easily made between the site and other retailers in the PSA. I note the Council's commitment to deliver change in Walsall and address the Town Centre's health, but the evidence before me leads me to consider that the proposal would not have a significant adverse impact. However, this is based solely on the imposition of the proposed planning condition, as there would be a significant adverse impact on the PSA without it. Thus, I am of the view that the proposed condition satisfies the tests set out in Framework paragraph 55.
18. Accordingly, I conclude that the proposed development would not, subject to a condition to control the use of the Class A1 retail unit, harm the vitality and viability of the PSA of Walsall Town Centre. Consequently, the proposal would accord with BCCS Policies CEN3, CEN6 and CEN7; saved UDP Policies S1, S2, S4, S6 and S7; AAP Policies AAPS1 and APPS2. Jointly, among other things, these seek main town centre uses to be located in accordance with the role and function of centres within the hierarchy. For bulky goods retail proposals located in edge of centre locations they should demonstrate a need for the facility, accord with the sequential approach, be located immediately adjacent to the PSA and link directly to it, and not individually or in combination with other schemes be likely to have a significant adverse impact on the vitality and viability of the town centre.

Other matters

19. I note that evidence submitted about the use of the appeal site, but I have considered the appeal scheme on its own merits. I understand that the site is next to the Bradford Street Conservation Area (BSCA), but the proposed development would be similar to other units on the Retail Park. Given this, the proposal would have a neutral effect on the BSCA, and thus, preserve it. No harm would also be caused, subject to the imposition of planning conditions suggested by the Council, to the living conditions of nearby occupants and highway safety.

Conclusion and conditions

20. I have had regard to the planning conditions suggested by the Council. I have imposed a plans condition in the interests of certainty. A condition about the materials to be used on the external surfaces of the development is necessary in the interests of the character and appearance of the area. Given the site's surroundings and condition, I have imposed a condition for a Construction Environmental Management Statement to safeguard the amenities of the area,

the occupiers of residential properties and to control the environmental impacts of the development.

21. I have imposed an amended planning condition to secure bicycle facilities, in the interests of encouraging the use of sustainable modes of transport, but I have omitted the requirement for a customer entrance in the Midland Road elevation as this is not necessary to make the development acceptable. To ensure the safe development of the site and to protect human health and the environment, I have imposed a condition that the appellant company has agreed to so that the site is free from contamination. To secure a satisfactory means of drainage and to minimise the risk of pollution, a condition is necessary to secure details of drainage, underground services and sewers.
22. For the avoidance of doubt and to ensure that the development does not detrimentally affect the PSA, I have imposed a condition to define the scope of the use. I have also imposed conditions about the service yard and a Travel Plan in the interests of highway safety and promoting sustainable travel. I have however amended the suggested versions of the Travel Plan condition before me to bring clarity and so that it allows for the review of travel behaviours and the potential need for any subsequent changes to be made to the Travel Plan by any future occupier the unit. In the interests of clarity and the amenity of the area, I have imposed a condition to secure the opening hours for the unit. On the other hand, a condition to obtain precise details of the internal floor layout and thereafter retain that layout would not be necessary and would unreasonably stifle any changes that an operator may wish to make to best support the retail function of the unit. Thus, I have not imposed this condition.
23. For the reasons set out above, I conclude that the appeal is allowed.

Andrew McGlone

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 carried out in accordance with the following approved plans and documents: JRP01.0110; JRP01.100; JRP01.0220; Phase I Geo-Environmental Assessment, dated 15 May 2018; Planning and Retail Statement, dated January 2019; and Transport Statement, dated May 2019.

Pre-commencement

- 3) Prior to the commencement of development a Construction Environmental Management Statement (CEMS) shall be submitted to and approved in writing by the Local Planning Authority. The CEMS shall include:
 - i. Construction working hours
 - ii. Parking and turning facilities for vehicles of site operatives and visitors
 - iii. Loading and unloading of materials
 - iv. Storage of plant and materials used in constructing the development
 - v. A scheme for recycling/disposing of waste resulting from construction works
 - vi. Temporary portacabins and welfare facilities for site operatives
 - vii. Site security arrangements including hoardings
 - viii. Wheel washing facilities and/or other measures to prevent mud or other material emanating from the site reaching the highway
 - ix. Measures to prevent flying debris
 - x. Dust mitigation measures (particularly as the contaminated land investigation has indicated that land is contaminated)
 - xi. Measures to prevent site drag-out (including need for wheel cleaning and use of a road-sweeper)
 - xii. Noise and vibration (if piling and/or ground stabilisation is to be conducted) mitigation measures

The development hereby permitted shall be carried out in accordance with the approved CEMS throughout the construction period.

- 4) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved by the Local Planning Authority before the

development is first brought into use.

- 5) Prior to the commencement of the development hereby permitted drainage plans for the discharge of surface water and disposal of foul sewerage and all existing and proposed underground services and sewers 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 which shall be retained as installed for the lifetime of the development.

Pre-occupancy or other stage conditions

- 6) Prior to the commencement of building operations above damp proof course of the development hereby permitted a schedule of materials to be used in the construction of the external surfaces including details of the colour, size, texture, materials and specification of bricks, cladding, render, roof tiles, windows, doors, rainwater products and soffits 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.
- 7) The development hereby permitted shall not be occupied until a secure and illuminated space has been laid out within the site for bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
- 8) The development hereby permitted shall not be brought into use until the approved HGV turning facility shown on TTC drawing no. 210237-01 has been clearly demarcated on the ground. Thereafter this area shall be used solely for this purpose only and be kept free at all times of any outside stored materials or apparatus for the life of the development.
- 9) A Travel Plan should be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted is first occupied or used by members of the public. The Travel Plan should be prepared in accordance with the framework set out in the TCC Transport Statement, dated May 2018. The development hereby permitted shall not be carried out, or made available to visiting members of the public or staff, otherwise than in accordance with the approved Travel Plan and implemented, monitored and reviewed for the lifetime of the development by the future occupier of the development and available for inspection as a written statement of the ongoing activities by the Local Planning Authority within 14 days of a written request.
- 10) Prior to the first occupation or use by members of the public of any part of the development hereby approved until the opening hours shall be submitted to and approved in writing by the Local Planning Authority. The approved opening hours shall be implemented and maintained throughout the duration of the use.

Post occupancy monitoring and management

- 11) The floorspace of the development hereby permitted shall only be used for the sale of DIY products (including materials and accessories), home improvement products, carpets and floor coverings, fabric, furniture, soft and hard furnishings, household goods, homewares, decorative products, glassware, cookware, kitchen utensils, white and electrical goods, automotive and cycle parts, pet food, garden tools, arts and craft materials, tents, camping, caravanning, leisure and outdoor equipment, or related accessories for all of the aforementioned or the provision of ancillary café facilities for the consumption within the premises.

END OF SCHEDULE