
Appeal Decision

Site visit made on 10 March 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeal Ref: APP/U4610/W/19/3241728

Land at Brade Drive, Coventry CV2 2PN

- 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 K Sneed, Jigsaw Planning Limited against the decision of Coventry City Council.
 - The application Ref FUL/2019/1818, dated 11 July 2019, was refused by notice dated 11 September 2019.
 - The development proposed is erection of detached single storey building to accommodate a drive-thru coffee facility, car park and associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on: (i) the vitality and viability of the Brade Drive District Centre (BDDC); (ii) the appearance of the area with particular regard to green infrastructure; (iii) biodiversity; (iv) whether the proposal provides a safe and suitable pedestrian linkage to BDDC; and (v) the effect of the proposed development on the living conditions of neighbours in respect of noise.

Reasons

Vitality and viability of BDDC

3. The appeal site is in an edge of centre location adjacent to the BDDC. In line with national planning policy and guidance for sequential tests, Policy R4 of the Coventry Local Plan, 2016 (LP) requires a Sequential Assessment (SA) for all retail and other main town centre use proposals outside a defined centre.
4. The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of centre locations (with preference for accessible sites which are well connected to the town centre). It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking.
5. Furthermore, Paragraph 87 of the National Planning Policy Framework (The Framework) states 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.
6. Based on the appellant's SA, with the exception of the BDDC, the main parties do not disagree that there are no suitable, viable and available sites in the four centres reviewed within the SA.
 7. In respect of the BDDC, Policy R1 of the LP specifically refers to the need to diversify the centre with an allocation of 1000sqm of small scale A1-A5 units. The Council suggests that this allocation is on the basis of its extensive car park area which is underused.
 8. In this case, the appellant asserts that Asda, which owns the car park area within the BDDC are not willing to sell or lease any of this land. However, I have not been provided with any substantive supporting evidence to confirm this, specifically in relation to the appeal scheme.
 9. Notwithstanding the above, with reference to the Supreme Court decision in the case of Tesco Stores Limited v Dundee City Council (2012), the appellant argues that Costa Coffee's operational requirements (size and locational) are essential to ensuring that any opportunity is suitable and viable. Adding that this is consistent with Costa Coffee's approach to new development proposals and to completing the SA. Accordingly, the appellant concludes that the land within the BDDC is not suitable for the appeal scheme.
 10. The above Supreme Court decision construed the word 'suitable' to mean 'suitable for the development proposed by the applicant'. Nonetheless, the Supreme Court went on to identify what it described as 'an inbuilt difficulty with the sequential approach' whereby the policy could be defeated by developers and retailers taking an inflexible approach to their requirements. Furthermore, the Planning Practice Guidance¹ advises as a relevant question: '...is there scope for flexibility in the format and/or scale of the proposal?' It continues: 'It is not necessary to demonstrate that a potential town centre or edge-of-centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal'. It is evident, therefore, that some flexibility on the part of the prospective developer in respect to the scale and form of development being proposed is expected.
 11. In light of the above, the appellant has not demonstrated flexibility on issues such as format and scale. Furthermore, my findings in respect of the pedestrian accessibility of the proposed scheme, as set out below also undermine its overall connectivity to the BDDC.
 12. For the above reasons, the submitted SA fails the sequential test by not clearly demonstrating that the proposed development could not be located within BDDC to support its vitality and viability. Accordingly, the proposal would be in conflict with Policies R1, R3, R4 and R6 of the LP, which when read together set out a hierarchy of centres within the City and seek to locate retail and main town centre uses within these to safeguard their vitality and viability.

¹ Paragraph: 011 Reference ID: 2b-011-20190722

Appearance (green infrastructure)

13. The appeal site is entirely landscaped, incorporating amenity grassland and clusters of mature and semi-mature trees. The southern boundary adjoins an existing vehicular access which serves the Asda superstore, associated petrol filling station and a carwash. The northern boundary is adjacent to a footpath and beyond this is a strip of woodland and a watercourse.
14. On the available information, the appeal site is not designated as 'Green Space' under Policy GE2 of the LP. Therefore, this Policy is not relevant to the determination of the proposal. Nevertheless, the site comprises amenity landscaping which is green infrastructure in the context of Policy GE1 of the LP. Amongst other things this Policy requires that new development will be expected to maintain the quantity, quality and functionality of existing green infrastructure, and that where quantity is not retained, enhancement to quality is expected.
15. There is limited evidence before me that the appeal site is used for recreational or community use. Moreover, nearby, to the north west of the site is a larger and more varied open space which offers better functionality for such uses. However, and although the existing trees at the site are unprotected and some are of low quality, these mature and semi-mature species along with the amenity grassland contribute to the site's open and verdant quality. Together, with the other nearby green infrastructure, the site offers relief to this largely urban area and makes a positive contribution to its visual appearance.
16. As a consequence of the proposed scheme and despite some new planting, there would be a significant reduction in landscaping at the site and an appreciable loss of trees, including along the frontage of the site. This would significantly diminish and harm the sites quality and contribution to the appearance of the area with particular regard to green infrastructure. As such, the proposal would be in direct conflict with the aims of Policy GE1 of the LP.

Biodiversity

17. The appellant's Ecological Appraisal suggests biodiversity improvements, some of these are on land outside the appeal site and no detailed scheme has been provided. Consequently, and despite the condition suggested by the Council's Ecological Assistant, I cannot be certain that the suggested enhancements are deliverable and would bring a net gain in biodiversity. This would be contrary to the aims of Policies GE1 and GE3 of the LP, which amongst other matters require that development proposals lead to a net gain in biodiversity.

Accessibility

18. The supporting Transport Statement (TS) discusses the sites potential pedestrian connectivity and the proposed development incorporates a short link to the existing footpath adjacent to the site, which links through to the BDDC and Hinckley Road. However, this pedestrian link is located adjacent to an area which would be used by vehicular traffic associated with the proposed development. It is also unclear how this would safely link to the entrance of the proposed building. Therefore, the proposed pedestrian link is poorly designed and would fail to provide safe and suitable pedestrian connectivity to BDDC, resulting in a largely standalone development. This would be in conflict with Policies DE1 and

AC4 of the LP, which amongst other things seek to ensure suitable and safe pedestrian access and linkages between developments.

Living conditions of neighbours

19. The appellant's Noise Assessment assesses the effects of noise arising from the proposal on the occupiers of nearby dwellings. This assessment concludes that the proposed drive-thru unit at most would have a negligible impact for the most noise sensitive periods considered and that the business could operate 05.00 – 23.00 hours on all days of the week. Nevertheless, although the application includes some information on the location of the proposed plant there is limited information on its specification. Therefore, I concur with the main parties that this could be addressed by a specific condition, if the appeal were to succeed. Consequently, on the information before me, I conclude that the proposed development would not harm the living conditions of neighbours with regard to noise. Accordingly, I find no conflict with Policies R6 and DS3 of the LP which amongst other things seek to protect the living conditions of neighbouring residents.

Other Matters

20. In granting planning permission (ref: FUL/2017/2837) on the 21 June 2018 for a Costa coffee shop at an out-of-centre site on Gielgud Way, about 1km to the north of the appeal site, the Council concluded that land within the BDDC was not available for the purposes of that development. However, in that case a representation from Asda as landowner confirmed that whilst land may become available, there were no sites available at the time of that application. As such, the circumstances and evidence were different in that application and therefore it does not lend support to the appellant's case.
21. In referring to a previous planning permission (Ref: 48228) for the redevelopment of BDDC, granted on the 28 July 2000. The appellant argues that the appeal site was included within the red line boundary of that permission and was intended for 'future development'. Nevertheless, on the information before me I cannot determine the lawfulness of that planning permission.
22. The proposal would result in some benefits including economic investment and job creation/support, and I have also noted that the proposed development would be energy efficient. However, these factors do not outweigh the harm I have identified and overall conflict with the development plan to which I attach significant weight.

Conclusion

23. Although I have found that the proposed development would not harm the living conditions of neighbours, it fails to safeguard the vitality and viability of BDDC and the appearance of the area with regard to green infrastructure. The proposed scheme also fails to demonstrate biodiversity enhancements and a safe and suitable pedestrian linkage to BDDC. All of which are contrary to the development plan. I, therefore, conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR