



Appeal Decision

Site visit made on 7 July 2020 by G Sibley MPLAN MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal Ref: APP/C4615/W/20/3248286

128 High Street, Brierley Hill, DY5 3BB

- 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 Ms Jan Clark of Notemachine UK Ltd against the decision of Dudley Metropolitan Borough Council.
 - The application Ref: P20/0056, dated 15 January 2020, was refused by notice dated 28 February 2020.
 - The development proposed is described on the application form as the retrospective application for the installation of an ATM installed through a secure panel to the right hand side of the shop entrance.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of an ATM at 128 High Street, Brierley Hill, DY5 3BB in accordance with the terms of the application Ref: P20/0056, dated 28 February 2020.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. The ATM has already been installed and thus the application was made retrospectively.
4. In the interest of clarity, I have used the description of development from the Decision Notice because this more accurately described the development for which planning permission is required. However, I have removed the term 'retrospective' because it is not an act of development.

Main Issue

5. The impact of the development upon highway safety.

Reasons for the Recommendation

6. The Automated Teller Machine (ATM) has been installed within the frontage of a convenience store on High Street which is located within the central shopping district for Brierley Hill which is part of the Brierley Hill High Street Conservation Area (CA). The road in front of the site is subject to a prohibition of waiting and slightly further down the road on the opposite side is a bus stop

and the crux of the Council's reason for refusal was that the location of the ATM would result in vehicular users parking outside the ATM which could impact the free flow of traffic and have an unacceptable impact upon highway safety.

7. The site is at the end of a busy shopping district that is heavily trafficked and the bus stop opposite the site extends out into the road. The road narrows and traffic can come to a standstill at this location. There are a number of parking spaces located along the road and there are several car parks located off High Street all of which are within a short walking distance of the ATM. A number of these car parks are connected to supermarkets that have ATM's located outside of them.
8. There are two further ATM's located along this section of High Street where vehicular users would not need to park within the prohibited area. Given the busy nature of the road, the area directly in front of the ATM is an undesirable location to stop a car to withdrawn money. The vast majority of vehicular users would not consider it to be necessary to park next to the ATM just to access this particular ATM, especially because there are other more easily accessible ATM's for vehicular users.
9. Parking in front of the ATM is subject to the prohibition of waiting and there is recourse to issue a penalty charge to anyone who does park within this zone and this is an effective deterrent to control parking within this zone. There is sufficient deterrent from the punishment for parking within the zone, combined with the way the highway has been designed within this section of the road to deter vehicular users parking outside the ATM.
10. Given the location of the ATM, it is likely that most of the users of this ATM will be pedestrians visiting the shopping district. For the reasons discussed above, the number vehicular users accessing this ATM is likely to be limited. The deterrent to parking in this location combined with the ready availability of alternative ATM's means that the ATM in this location does not have an unacceptable impact upon highway safety. The application was submitted retrospectively such that the Council would have been able to observe the way in which the facility was used when assessing the proposal. However, no direct evidence, such as photographs or witness information, has been provided to indicate that its use has actually caused highway safety issues. Therefore, the development accords with Policy S17 of the Dudley Borough Development Strategy (Adopted 2017) which requires development to make adequate and safe provision for access and egress by vehicle users, cyclists, pedestrians and other road users. It is also in accordance with Policy TRAN2 of the Black Country Core Strategy (Adopted 2011) which note that development proposals are required to ensure they provide an acceptable level of accessibility and safety by all modes of transport to and from all parts of a development.

Other Matters

11. The CA covers a commercial shopping district. There are a number of listed and non-listed buildings from the 18th to the 20th Century that are connected to the town's industrial heritage. Where the ATM has been installed the buildings are generally modern and utilitarian in design. The ground floors are typically shopfronts and there is a wide variety in the appearance of the shopfronts. The building where the ATM has been installed is used as a convenience store and the ATM is an appropriate addition to this commercial building within a busy shopping district. Consequently, the ATM preserves the character and

appearance of the street scene. The Council have referred to an unauthorised roller shutter door at the premises which, in their view causes harm to the character and appearance of the area. A condition has been suggested that would require its removal. However, regardless of its merits, the roller shutter does not form part of the proposal before me. It amounts to a separate act of development. The Council is satisfied that the ATM itself does not cause harm to the character and appearance of the area and, consequently, the removal of the roller shutter is not necessary to make the development at issue in this appeal acceptable. As such, the imposition of such a condition would not meet the statutory tests and would go beyond what could reasonably be required.

Conditions

12. A condition has been suggested that the development shall be carried out in accordance with a number of plans. This condition is not necessary because the development has already been carried out.
13. A condition has been suggested to ensure the details of secure by design mitigation measures are submitted to and approved by the Council and then implemented. The condition itself does not indicate precisely what those details would entail but the response of the West Midlands' Police at the application stage referred to anti-ram bollards, markings on the pavement and CCTV. The pavement appears to be part of the public highway and may be out of the control of the appellant. Consequently, it is not clear that the required measures could actually be installed, and such a condition may not be enforceable. In any event, the ATM is on a very busy, well lit, highway with passing traffic and good levels of visibility. No evidence of any crime associated with the facility has been provided, nor any evidence of crime within the surrounding area. In view of those matters, I recommend that the suggested condition is not attached.

Conclusion and Recommendation

14. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed.

G Sibley

APPEAL PLANNING OFFICER

Inspector's Decision

15. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the appeal should be allowed without conditions imposed.

Chris Preston

INSPECTOR