



Appeal Decision

Site visit made on 18 August 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2020

Appeal Ref: APP/W4325/W/20/3246431

Stratton Court, Thursby Road, Bromborough, CH62 3PW

- 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 Miss F Heeley of Lidl Great Britain Ltd against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/19/00151, dated 31 January 2019, was refused by notice dated 8 August 2019.
 - The development proposed is erection of a Class A1 retail unit, car parking and servicing areas, access and associated works following demolition of existing buildings.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a Class A1 retail unit, car parking and servicing areas, access and associated works following demolition of existing buildings at Stratton Court, Thursby Road, Bromborough, CH62 3PW in accordance with the terms of the application, Ref APP/19/00151, dated 31 January 2019, subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for costs was made by Miss F Heeley of Lidl Great Britain Ltd against Wirral Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987. These amendments include the introduction of a new broad 'commercial, business and service' use class (Class E) which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3), and offices and other business uses (B1) use classes. Paragraph 4 of the Regulations provides that: "*If prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that application must be determined by reference to those uses or use classes*". Accordingly, this appeal must be determined with reference to the use classes that existed on 31st August 2020.

4. A pre-commencement condition is attached to this Decision. As required by Section 100ZA(5) of the Town and Country Planning Act 1990, the appellant has agreed to this condition in writing.

Main Issues

5. The main issues are, firstly, whether the proposal would be an appropriate location for retail development having regard to the provisions of the development plan and, secondly, the effect of the proposal on the character and appearance of the area.

Reasons

6. The appeal site is within a Primarily Industrial Area ('PIA') as defined in the Wirral Unitary Development Plan ('UDP') (2000). It is also located within the Wirral International Business Park ('WIBP'), which is the largest employment area in the Borough. UDP Policy EM8 relates to development within PIAs and is permissive of development falling within Classes B1, B2, and B8 only. Whilst the UDP was adopted some time ago, Policy EM8 is generally consistent with the National Planning Policy Framework ('the Framework') which states that planning policies should set criteria for local inward investment to match the economic strategy and to meet anticipated needs.
7. Paragraph 120 of the Framework states that where there is no reasonable prospect of an application coming forward for the use allocated in a plan, applications for alternative uses should be supported. In this regard, a significant amount of marketing evidence has been submitted by the appellant. This states that the appeal site has been marketed continuously for employment purposes since December 2013, with the exception of a 5 month period in 2015. The marketing involved 4 separate agents and included a significant period of time before the current owners acquired the site. Whilst a number of initial enquiries were received, the majority were for non-employment uses that would have required planning permission for a change of use. Moreover, only a small number of these led to a viewing, and no formal offers were received. The Council has not questioned the validity of the appellant's marketing evidence, and based on the evidence before me, this appears to have been a thorough and robust exercise. In my view, it demonstrates a clear lack of demand for employment uses at the site over a significant period of time. In this regard, I place limited weight on the number of initial enquiries received, as many of these were for non-policy compliant uses or did not lead to a more concrete interest.
8. The appellant has submitted a Viability Assessment (GVA, June 2017) which concludes that the re-use of the site for employment uses is not viable. This is supported by viability analysis in the Wirral Employment Land and Premises Study (2017), which concluded that small / medium sized office and industrial uses were not generally viable to develop in Eastham and Bromborough. The Council's Officer Report acknowledges that viability is an issue and states that *"this is not unusual because without grant funding employment development is not currently generally viable throughout Wirral"*. Importantly, however, the appellant's Viability Assessment states that the redevelopment of the appeal site would generate negative land values in excess of that which could be funded through grant, given State Aid restrictions. No party has challenged that conclusion. Accordingly, grant funding would not be an option in this case.

9. My attention has been drawn to a number of market signals, which it is asserted point towards an improving economic position in the Wirral. However, most of these indicators either date to 2017 or before, which is the same year in which the Council's Employment Land and Premises Study was published. As set out above, this concluded that small and medium sized office and industrial developments were generally unviable in this area. These market signals may also simply reflect a broader recovery from the 2008-09 recession.
10. The Employment Land and Premises Study states that Bromborough is the focus of prime industrial space in the Borough and that there are few undeveloped plots remaining. It also assessed a number of sites in Bromborough and Eastham and recommended that none of them should have their employment use protection removed. However, the appeal site does not appear to have been assessed as part of that exercise. Moreover, I have detailed site specific marketing and viability evidence before me that would not have been available to the authors of that study.
11. My attention has been drawn to Policy CS17 of the Proposed Submission Draft Core Strategy for Wirral (2012). Whilst this document is now of some age, and the Core Strategy is no longer being progressed, the Council states that it plans to carry forward Policy CS17 as part of its new Local Plan. However, the Local Plan is at an early stage of preparation and it is unclear whether the policy wording will change, or whether there are any unresolved objections to it. I therefore attach only limited weight to Policy CS17 at this stage. However, it is noteworthy that it requires existing employment sites to be continuously marketed for at least 2 years, which is the case here.
12. It is asserted that the appeal site is of particularly high quality given its position at the entrance to the WIBP. However, Caldbeck Road is perceived more as a gateway and entrance point into the neighbouring retail park in my view. In this regard, a large sign advertising the occupiers of the retail park is positioned prominently at the junction with New Chester Road.
13. The Council has provided a series of Google Street View Images that appear to show the site as being at least partially occupied in October 2009 and July 2012. However, these images shed little light on the circumstances that led to the site becoming vacant.
14. The Council state that the appeal proposal has the potential to create a precedent for the loss of other sites within the WIBP. In this case, however, detailed site specific evidence has been provided which indicates a lack of demand for employment uses, and a lack of viability that could not be bridged by grant funding. It is therefore unclear that the circumstances relating to this development would necessarily be repeated elsewhere, and no directly comparable or similar sites have been identified.
15. A number of parties refer to a recent approval for an Aldi food store (Ref 16/00543) on another site within the WIBP. However, the full details of that case, including all of the relevant supporting information, are not before me. It is therefore unclear whether there is any direct comparability to the current proposal. In any case, I have come to my own view on this appeal, based on the site-specific evidence that is before me.
16. Notwithstanding the above, as the development proposes a retail use within a Primarily Industrial Area, I consider that it would be contrary to Policy EM8 of

the Wirral UDP (2000). I return to this matter in my Overall Balance and Conclusion, below.

17. Separately, the Council's Decision Notice states that the development would be contrary to UDP Policy URN1, which relates to regeneration. However, it is not clear that there is any conflict with this policy, which seeks to ensure the re-use of neglected, unused and derelict land. Moreover, no specific conflict with any regeneration strategy for the area has been drawn to my attention. In addition, as the site is not an employment allocation, the development would not prejudice the Borough's requirement for industrial land and premises. There would therefore be no conflict with UDP Policy SH10. In any case, even if I had come to a different view on this matter it would not alter my conclusions regarding the development.
18. The Decision Notice also refers to draft policies CS2 and CS7 of the emerging Proposed Submission Draft Core Strategy for the Wirral (2012). However, from the information before me, it is unclear whether the Council intends to incorporate these policies into its emerging Local Plan in their current form. I therefore attach little weight to them. In any case, there is no obvious conflict with draft Policy CS2, which is strategic in nature and simply states that the industrial and commercial areas along the A41 will be a focus for new jobs. Similarly, Policy CS7 is also largely strategic in nature insofar as it relates to the WIBP.

Character and appearance

19. The appeal site currently contains 2 derelict commercial buildings and significant areas of car parking. The proposed retail unit would have a similar character to the existing commercial buildings and would occupy a comparable position within the site. Whilst it would be more prominent than the existing buildings, and would incorporate larger areas of glazing, this would not appear out of keeping in my view given its commercial surroundings.
20. It is asserted that the development would appear as an expansion of the neighbouring retail park into the WIBP. However, the proposed food store would be significantly smaller than the units in the retail park and would have a different appearance and layout. It would also be physically separated from the retail park by a large area of open space.
21. For the above reasons, I conclude that the development would not harm the character and appearance of the area. It would therefore accord with the Framework, which seeks to ensure that development is well-designed and sympathetic to local character.

Other Matters

Planning obligation

22. The appellant has submitted a signed and dated Unilateral Undertaking ('UU') that would make a significant contribution towards bringing employment development forward in the WIBP. The proposed sum is based on a report by Aztec Interiors (Ref 16961) that documents the cost of refurbishing the existing buildings on the site for employment purposes. The obligation states that the Council shall use the contribution to bring employment development forward in the WIBP, which may include the provision of infrastructure leading to it.

23. However, as set out in this Decision, I consider that the development is acceptable in planning terms without this contribution. Moreover, there is no policy requirement for such a contribution, nor is it clear how this sum would be spent, or what project it would fund. In these circumstances, I do not consider that it would meet the first test under Regulation 122 of the Communities Infrastructure Levy Regulations 2010. I am therefore unable to take the UU into account in my determination of this appeal.

Highways matters

24. The appellant's Technical Note (SCP, 29 May 2019) sets out the effect of the development on the Caldbeck Road / New Chester Road / Croft Avenue East Junction. Whilst the submitted modelling indicates that some arms of this junction would exceed their theoretical capacity during the weekday PM Peak, this exceedance would be minor. It would also be accompanied by reductions on other arms of the junction once proposed improvements are taken into account, particularly during the Saturday Peak. Overall, the effect of the development on this junction would not be significant in my view.
25. Appendix 5 of the Addendum Transport Assessment appears to assign trips associated with the development to a second left-in, left-out access directly onto Caldbeck Road. However, no such access is proposed, and this appears to reflect an earlier iteration of the scheme. Accordingly, the number of trips directed onto Thursby Road, and to the left turn from Thursby Road onto Caldbeck Road, would be significantly greater than is assumed. However, Thursby Road is currently subject to relatively low levels of traffic, and I note that the Highway Authority did not raise the junction between it and Caldbeck Road as a point of concern. In my view, it is highly unlikely that there would be any significant impacts on either Thursby Road or the junction with Caldbeck Road arising from the development.
26. The appellant's Addendum Transport Assessment (SCP, 14 March 2019) is informed by traffic surveys conducted on 14-15th December 2018. Whilst it is asserted that December is not a 'neutral month' in terms of school holidays and other abnormal traffic periods, these surveys were undertaken well before the Christmas holiday period.
27. A swept path analysis has been submitted which shows that a delivery vehicle could enter and leave the site in a forward gear, even if the customer car park were full. Whilst it would be necessary to manoeuvre over a pedestrian crossing within the site, given the size and visibility of the delivery vehicles and the low speed at which they would be travelling, this would not prejudice pedestrian safety in my view.
28. The development would provide a total of 127 car parking spaces, which would be sufficient for a development of this type and size. In this regard, I note that the Highway Authority states that the development would comply with the Council's adopted parking standards.
29. The proposed off-site highway improvements include new pedestrian crossings at the junction between Thursby Road and Caldbeck Road, and a new pedestrian refuge island on Caldbeck Road. These measures would significantly improve pedestrian safety in the vicinity.

30. Any increase in HGV movements along Thursby Road associated with the development is unlikely to be significant and would be mostly limited to deliveries.
31. It is asserted that parking associated with a neighbouring trampoline park ('Jumpin Josephs') is already causing on-street parking stress along Thursby Road. However, the Council state that this use is operating without planning permission.
32. There is no indication before me that the Highway Authority is considering installing yellow lines along Thursby Road.

Other considerations

33. The development proposes a main town centre use in an out-of-centre location. However, the appellant's sequential assessment was unable to identify any sequentially preferable alternative to the appeal site. Moreover, the proposal is below the national threshold of 2,500 square metres of gross floorspace and so an impact assessment is not required. Whilst I note that the Council intends to specify a lower threshold in its emerging Local Plan, that document is at an early stage of preparation and it is unclear whether this threshold is subject to unresolved objections. Accordingly, I attach only limited weight to it.
34. Traffic noise associated with the development is unlikely to generate a significant level of disturbance to occupiers of the Portal Business Centre. In this regard, I note that that building is already positioned next Caldbeck Road, which is a significantly busier route.

Conditions

35. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. In addition to the standard time limit condition, I have imposed a condition that requires the development to accord with the approved plans. This is necessary in the interest of certainty. I have also imposed a condition requiring the submission and approval of a Construction Management Plan, which is necessary in the interest of highway safety and residential amenity. This condition is pre-commencement in nature as all site works will be informed by the Construction Management Plan.
36. A condition relating to foul and surface water drainage is necessary in order to ensure that appropriate drainage arrangements are provided. A lighting condition is also necessary to ensure that the development does not disrupt commuting and foraging bats in the area. Further conditions relating to landscaping and facing materials are necessary to ensure that the development has an acceptable appearance. A condition requiring highway improvements to be undertaken is necessary in the interests of highway safety and junction capacity. In addition, a condition requiring the submission and approval of a Travel Plan is necessary in order to deliver sustainable transport objectives.
37. A condition requiring the cycle parking to be installed prior to first occupation is necessary in order to ensure that this facility is available to staff and customers. Further conditions relating to internal floorspace are necessary in order to protect the vitality and viability of existing town centres. In this regard, I have taken the floorspace figures from the approved plans, albeit I note that other figures are quoted elsewhere within the submitted documents.

Finally, a condition restricting the opening hours of the retail store is necessary in the interests of residential amenity.

Overall Balance and Conclusion

38. As set out above, the development proposes a retail use in a designated Primarily Industrial Area and would be contrary to the development plan in this regard. However, there is detailed marketing and viability evidence before me which demonstrates that there is no realistic prospect of the site being used for employment purposes. Moreover, the development would create up to 40 jobs and would generate other economic benefits during the construction phase. It would also involve the redevelopment of a derelict brownfield site. I attach significant weight to these benefits.
39. Overall, there is conflict with the development plan, but no other significant harm would arise from the development. Moreover, significant benefits would be delivered. In this case, the conflict with the development plan would therefore be outweighed by other material considerations.
40. For the reasons given above I conclude that the appeal should be allowed.

Thomas Hatfield

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: AD 100; AD 101; AD 102; AD 110 A; AD111 A; AD112 B; AD113 B; AD114 A; AD115 A; AD116 C; AD117 A; AD123 A; AD126 A.

Pre-commencement conditions

- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) measures to control the emission of dust and dirt during construction;
 - v) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vi) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Pre-commencement (other than demolition)

- 4) Other than demolition, no development shall take place until a detailed surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall accord with the principles set out in the Flood Risk Assessment with Detailed Drainage Strategy by Beam Consulting (Ref 09-85-DOC-001A, 18 June 2019) and shall include an Operation and Maintenance Plan. The approved scheme shall be implemented in full prior to the first occupation of the development and shall thereafter be retained, maintained, and managed in accordance with the approved scheme.

Pre-occupation conditions

- 5) Prior to the first occupation of the development, details of the external lighting shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall demonstrate how the external lighting shall avoid disturbing or preventing bats from using their territory or having access to their breeding sites and resting places. All external lighting shall be installed in accordance with the approved details and shall thereafter be retained as such.
- 6) Prior to the first occupation of the development, full details of soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees

or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) Prior to the first occupation of the development, the proposed highway improvements shall be completed in accordance with the details on plan Ref 190312_15036_AD 008 'Agreed Off-site Highway Improvements'.

Other conditions

- 8) No development involving the use of any facing materials shall take place until samples of the materials to be used in the construction of external surfaces of the building have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 9) Within 12 months of the first occupation of the development, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The provisions of the Travel Plan shall be implemented and operated in accordance with the timetable contained therein.
- 10) The cycle parking shown on plan Ref AD 115 A shall be made available for use prior to the first occupation of the development and shall thereafter be retained.
- 11) No more than 20% of the net retail floor space shall be used for the sale of goods other than convenience goods, cold food and drink for consumption off the premises.
- 12) The building hereby approved shall have a gross internal floor space no greater than 1,984 square metres with a net trading area no greater than 1,258.5 square metres, as shown in the approved plans.
- 13) The retail food store shall only be open for trade between 08:00 and 22:00.