
Appeal Decisions

Site visit made on 26 October 2020

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal A Ref: APP/E2530/W/20/3249826

Land adjacent to the A15/A1175 Roundabout, Peterborough Road, Market Deeping

- 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 BP Oil UK Ltd against the decision of South Kesteven District Council.
 - The application Ref S18/2263, dated 3 December 2018, was refused by notice dated 14 November 2019.
 - The development proposed is the erection of roadside services to include a petrol filling station with ancillary retail floor space.
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Appeal B Ref: APP/E2530/Z/20/3244373

Land adjacent to the A15/A1175 Roundabout, Peterborough Road, Market Deeping

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by BP Oil UK Ltd against the decision of South Kesteven District Council.
 - The application Ref S18/2264, dated 3 December 2018, was refused by notice dated 14 November 2019.
 - The advertisement proposed is various illuminated and non-illuminated signage.
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Decisions

1. Appeal A is allowed and planning permission is granted for Erection of roadside services to include a petrol filling station with ancillary retail floor space at Land adjacent to the A15/A1175 Roundabout, Peterborough Road, Market Deeping in accordance with the terms of the application, Ref S18/2263, dated 3 December 2018 subject to the conditions in the attached schedule.
2. Appeal B is allowed and express consent is granted for the display of various illuminated and non-illuminated signage as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the additional condition in the attached schedule.

Application for costs

3. An application for costs was made by BP Oil UK Ltd against South Kesteven District Council. This application is the subject of a separate Decision.

Procedural Matters

4. As set out above, there are two appeals relating to the same site. Whilst dealing with each appeal on its own merits, to avoid any duplication I have addressed both in the same decision letter, except where otherwise indicated. The Council does not contest Appeal B in the event that Appeal A is allowed.
5. The Council's decision notice in reason for refusal 3 refers to the lack of electric car charging points. A revised plan¹ has been submitted which includes the required charging points and the Council subsequently confirmed that they would not pursue this aspect of the decision. Other updated plans and documents submitted are a detailed landscaping scheme², an Extended Phase 1 Habitat Survey³, and an External Lighting Impact Assessment⁴. I am satisfied that these updated plans and documents provide further clarification and do not materially alter the nature of the scheme nor would they prejudice any interested parties. I have therefore determined the appeal on this basis.
6. Since the application was determined the Council adopted the South Kesteven District Council Local Plan in January 2020 (Local Plan), which replaces the Core Strategy, Site Allocations and Policies DPD and saved policies from the previous Local Plan. The decision notice refers to the now superseded Core Strategy, however I am satisfied that both parties refer to the most up-to-date and relevant policies of the Local Plan in their appeal submissions. The emerging Deepings First Neighbourhood Plan is also referred to in the evidence, however it is at an early stage of preparation and I give it limited weight in the consideration of this appeal. Consequently I only refer to the recently adopted Local Plan in this decision.

Main Issues

7. The main issues are:
 - Whether the location of the proposed development is acceptable and accessible having regard to local and national policy which seek to manage development in the countryside and promote access by non-motorised users; and
 - The effects of the proposed development on the character and appearance of the surrounding area.

Reasons

Location and Accessibility

8. The appeal site is located outside of the built-up area of the settlement of Market Deeping, beyond the A15 and A1175 which contain the nearby residential and industrial areas of the town. For the purposes of planning policy, the site lies within the open countryside.
9. Local Plan Policy SP5 states that development in the open countryside will be limited to that which has an essential need to be located outside of the existing built form of a settlement, and it sets out a range of development types that

¹ Layout Plan 180335-031 Rev I

² Planting Plan 577-64_PL_LD09 Rev C

³ Extended Phase 1 Habitat Survey P2017/0320-01

⁴ External Lighting Assessment dated 16/3/20

will be supported. Policy SP4 supports development on the edge of settlements subject to a range of criteria. Policy SP2 identifies Market Deeping (as part of the 'Deepings') as a market town within the settlement hierarchy. Roadside service areas including petrol filling stations (PFS) are not specifically identified in any of the relevant policies of the Local Plan. Reference to such development in national policy is included in paragraph 104(e) of the National Planning Policy Framework (the Framework). It states that planning policies should provide for any large scale transport facilities that need to be located in the area, and footnote 42 refers to the primary function of roadside services which should be to support the safety and welfare of the road user.

10. The A15 and A1175 lead to the Deepings and larger settlements beyond including Peterborough, Spalding, Bourne and Stamford as well as providing a link to the A1 trunk road. The evidence indicates that two-way traffic flows on both roads exceed 15,000 vehicles per day. The nature and purpose of a PFS is such that a prominent roadside location is required to capture passing traffic. The proposed location at a roundabout junction of two roads which accommodate the quoted levels of traffic leading to a number of major destinations, would serve such a purpose. The scale and layout of the proposed development supports use by HGVs which frequent the adjacent road network. This provides further justification for its proposed siting outside of the built up area of the settlement.
11. I have had regard to whether the area is already adequately served by this type of development. There is currently one PFS (at the Co-op) which is located in the urban centre of Market Deeping away from any main through routes. Whilst it would serve a local need, the evidence indicates that it is unlikely to adequately accommodate the needs of longer distance traffic which bypasses the Deepings (HGVs in particular).
12. The appellant's evidence sets out the distances between modern service areas on the A15 and A1175, which are suitable for HGVs, located to the edges of the towns of Bourne, Spalding, Stamford and Peterborough. I disagree with the Appellant that the gaps between these services could be described as 'significant', and I observed that there are smaller PFS facilities in closer proximity to the appeal site. Nonetheless, it is noteworthy that the Council does not challenge the content of the needs report⁵ nor dispute that there is a need for a new PFS in this area. There is no evidence before me which would lead me to conclude that there is not a justified need for a new roadside service area in this location which would primarily serve passing traffic including HGVs.
13. Instead of challenging the need for a PFS, the Council have suggested that there are more suitable and appropriate locations in the area for the proposed development. They have directed me to part a) of Local Plan employment Policy E8 in this respect. However I disagree that such a 'sequential approach' is necessary for a PFS given that it is a sui-generis use falling outside of any of the Use Classes as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended). Whilst it would provide jobs, it is not an employment proposal listed in supporting paragraph 2.93 which sets out employment generating proposals for Policy E8.
14. Nonetheless, there is no evidence before me relating to any development proposals for the alternative sites put to me by the Council, which include

⁵ Report Relating to an Assessment of Need & Related Matters – Tim Hancock BSC FRICS MEI, March 2019

employment and housing allocations, and their suitability in terms of access (including by HGVs). Furthermore there is limited evidence before me to suggest that any of the sites are available or suitable for a PFS development.

15. The proposed sales building would have a gross internal area of just over 300 square metres. This includes the retail sales area and a take-away coffee counter ('Wild Bean Café'), customer toilets, staff rooms/office, storage, chiller, and meter room. The proposed retail sales area, at approximately 190 square metres, would not fill the entire building. It is of such a scale that the retail offer would be ancillary to the main purpose of the development which is to provide fuel to passing motorists.
16. Whilst objections have been received relating to the potential impact on Market Deeping town centre, the Council do not cite any harm to the vitality and viability of any nearby centres from the retail provision. A PFS is not listed in Annex 2 of the Framework as a 'main town centre use', and the Council did not request a sequential test to satisfy Local Plan Policy DEP2. The appeal site is aimed at passing trade and limited 'top up' shopping ancillary to the primary use as a PFS. Its size, format, and distance from existing residential properties would largely discourage the retail space from being a destination in its own right. The town centre of Market Deeping would continue to serve as the primary shopping destination for local residents. The brand of the retailer has no bearing on my findings, as the operator could change at any time. Likewise, competition with other similar establishments is not a matter which has a material bearing on my decision.
17. The Council are also concerned about the location of the proposed development in terms of access for non-motorised users. The PFS would primarily provide a service for drivers on the surrounding local road network, including HGVs, which may not otherwise divert into the centre of Market Deeping for fuel and a break. To a more limited extent it would also serve a purpose as a local convenience store for the area, and some customers (and staff) are likely to travel to it on foot or bicycle.
18. Although the appeal site lies beyond the built up area of Market Deeping it is in close proximity to it and within reasonable walking and cycling distance. The entire route between Market Deeping and the nearby village of Langtoft benefits from an existing footway/cycleway. On my site visit I found the walk between the appeal site and Market Deeping to be straightforward. The footway is of a reasonable width, is level, and is well lit. There is a need to cross several roads on this route; Peterborough Road (B1524), Northfield Road, the A1175 and then Peterborough Road (A15) again. I experienced a short wait for a gap in the traffic on the A1175 and A15, but there was good visibility and the A1175 has a split island between carriageways to aid crossing. Consequently, whilst it is convoluted in parts, I find that the existing route is acceptable and accessible in terms of sustainable forms of travel for the more limited numbers of non-motorised users seeking to access the facility.
19. A PFS does not represent any of the categories of development that would be supported in Local Plan Policy SP5, therefore the location of the proposed development in the open countryside conflicts with this Policy. However, the Policy is positively worded in that it supports a number of types of development and it does not specifically restrict others, where an essential need can be demonstrated. There would also be partial conflict with Policy SP4 of the Local

Plan in relation to development on the edge of settlements, in terms of a lack of demonstration of compliance with part a) (substantial support from the local community). Nonetheless, there are also references to essential need in Policy SP4. In this case, there is adequate evidence before me to suggest that the proposed PFS has a need to be located here, and there is no persuasive evidence to counter this. I find that the appeal site is in close proximity to the edge of Market Deeping, which is a market town as defined in the settlement hierarchy set out in Policy SP2. The proposed development would be accessible to both the local road network and to non-motorised users by the existing pedestrian/cycle links. As such, the proposed development complies with paragraphs 84 and 110 of the Framework.

Character and Appearance

20. The appeal site is located in the corner of an arable field and its open and rural appearance clearly differs to the nearby town and villages. The A1174, roundabout and vegetation beyond provide a distinct boundary to the urban area of Market Deeping. The appeal site and its surroundings are typical of the Fens landscape character area as identified in the South Kesteven Landscape Character Assessment 2007; in particular the low flat terrain, large scale open fields and sparse tree cover. Sensitivity to new development is identified as low to medium at the edge of existing settlements.
21. By the nature of the functional design and appearance of the PFS, coupled with the need for associated lighting and signage to direct vehicles, the proposed development would inevitably result in a significant new element of built development in the open countryside and an irrevocable change to the rural character and appearance of the area. Notwithstanding this, it is not within an area of countryside which is devoid of urban features. The landscape sensitivity is reduced by the proximity of the appeal site to the settlement of Market Deeping and the surrounding roads and sizeable 5-arm roundabout with associated lighting and signage. The footway/cycleway alongside the A15 and two laybys provide further urban influence.
22. In view of its proximity to these urban features, I find that the proposed development would not appear entirely out of context with its surroundings. The impacts would be limited to the immediate surroundings of the site and less so to longer distance views, where glimpses would be possible by moving traffic on the surrounding road network. The small complex of residential properties at Tithe Farm Pastures are separated from the site by an access road, fields and vegetation features. Whilst the proposed development would be clearly visible from the access road, direct views from the dwellings themselves would be less affected given their orientation and the distances involved.
23. The scale and layout of the proposed development is clearly functional and related to its principal use as a PFS. The design of the canopy is typical of that seen on numerous similar developments and would not be of such a scale that it would appear incongruous in this location adjacent to a busy roundabout. The retail building would comprise coloured cladding walls under a mono-pitch roof. On my site visit, I did not note any prevalent design characteristics within the immediate area nor historical references which would warrant a more bespoke approach to design. As such, I am satisfied that the scale, layout,

design and appearance of the proposed development would not result in any significant harm to the character and appearance of the area.

24. The Council have further concerns in relation to the lighting proposals. The External Lighting Impact Assessment (ELIA) provides detailed information about the proposed lighting scheme for the development and associated advertisements. Its use as a 24-hour PFS has a functional requirement for certain types and levels of lighting so that fuelling and other activities can be carried out safely. Higher levels of illuminance are required over the pump islands and tanker delivery bay, as required by Petroleum Licencing Regulations. The ELIA indicates that the lighting would be recessed downlights below the canopy area which would appropriately reduce any upward spread of lights. The tanker delivery area is located to the edge of the site closest to the highway and would only be illuminated when a delivery is taking place during hours of darkness, therefore such lighting would be intermittent for short periods only.
25. There would already be a level of light pollution in the area from the presence of the existing lighting columns along the highway, which the ELIA indicates have a high illuminance level throughout full hours of darkness. In terms of the impact on Tithe Farm Pastures, the retail building would provide some screening and shielding of the main area of lighting around the PFS forecourt. The lighting plan in the ELIA indicates there would be lower levels of light to the rear of the building, and the proposed planting scheme would provide some filtering of light levels where there is presently an open arable field.
26. The measures set out in section 7.6 of the ELIA to control the lighting, together with the landscaping proposals, would provide adequate mitigation to the nearest receptors both within the town and the more isolated properties within the darker countryside towards Langtoft, including those at Tithe Farm Pastures. A condition similar to that suggested at paragraph 7.11 of the ELIA would be appropriate to secure the measures to control the lighting.
27. Overall, I conclude that when viewed in the context of the existing roundabout, other road infrastructure and lighting, the visual impact of the PFS and associated signage would be limited to the immediate locality and would not result in significant harm to the intrinsic character and appearance of the wider area. As a result, there is no conflict with Policy DE1 of the Local Plan which seeks for development to achieve a high quality design which (amongst other criteria) should be of an appropriate scale given the context of the area, and which provides well designed landscaping. I also find there to be no substantial conflict with Policy EN1 which seeks for development to be appropriate to the attributes and features of the landscape in which it is situated. It follows that the proposal also accords with paragraphs 127 and 170 of the Framework. In terms of Appeal B, there is no conflict with the Regulations which require decisions for advertisement consent to be made in the interests of visual amenity.

Other Matters

28. The conclusions of the Transport Assessment and Stage 1 Safety Audit have been accepted by the Highway Authority, subject to a pre-commencement condition requiring further detail which would be necessary for a subsequent Section 278 Agreement under the Highways Act 1980. No substantial highway evidence has been submitted to persuade me otherwise that the proposed

single access/egress with right turn lane would not be safe for the type of vehicles and levels of traffic expected to utilise the proposed development. Whilst situated on a road subject to the national speed limit, the proximity to the roundabout means that traffic would be slower than is experienced by users of other accesses further towards Langtoft. I note the comparisons with other roadside service developments which operate successfully with similar junction arrangements, and these serve to further demonstrate that the access would be appropriate. There is no evidence before me to suggest that the proposed advertisements would result in any harm to public safety and the Highway Authority do not raise any concerns in this respect.

29. Any reduction in vehicle use resulting from the Covid-19 pandemic has not had a bearing on my decision given that the effects are likely to be temporary, and there is no substantive evidence before me relating to a reduction in demand for fuel. A PFS is, by its nature, a facility which does not promote renewable energy. Nonetheless, the provision of electric vehicle charging points would assist in reducing carbon emissions.
30. There are no designated heritage assets in close proximity to the site which would be directly affected by the development, but the site does have archaeological potential which is confirmed by the submitted Geophysical Survey. Any potential for encountering archaeological deposits can be appropriately dealt with by a condition requiring a Written Scheme of Investigation, to include trial trenching, and this is the approach suggested by Heritage Lincolnshire.
31. The Extended Phase 1 Habitat Survey concludes that there is very little potential for protected species to be present given the current arable nature of the site, and there is no substantive evidence before me to suggest otherwise. A condition to secure the measures recommended in the Survey report can ensure that protected species such as nesting birds are dealt with appropriately during construction. Biodiversity enhancements are proposed through additional planting of trees and hedgerows, along with wildflower grass areas to the drainage swales which can be secured as part of the landscaping scheme. There would be a loss of agricultural land, however it would only represent a small proportion of land in the wider area. The location of the appeal site in the corner of a much larger holding would not prevent productive use of the remaining arable land.
32. I have already found that the PFS would represent development which is acceptable in this open countryside location. There is nothing before me to suggest that siting a PFS here would set a precedent for further development, and any potential future proposals would be considered by the Council on their own merits having regard to relevant planning policies in place at the time. Additionally, whilst the site is undeveloped greenfield land it is not Green Belt so does not carry those restrictions which relate to such a designation.
33. A condition can require full details of the underground fuel storage tanks, as requested by the Environment Agency, to ensure there would be no impact on the local drains. Such details would also be subject to permits under separate legislation to ensure safety and environmental controls are met. In terms of living conditions, I have already established that the proposed development would not result in significant visual harm and that lighting can be controlled by condition. A condition can also be imposed to limit effects during construction.

34. Finally, whilst I cannot be certain that the creation of 25 full time equivalent jobs would go solely to local residents, the economic benefits resulting from increased employment in the area weighs in favour of the proposed development.

Conditions

35. For Appeal A, I have undertaken some minor editing of the Council's conditions for precision and clarity. The approved plans condition has been updated to reflect the most recent versions to provide certainty. Conditions which require details of external surface materials, drainage, fire hydrants, parking layout and manoeuvring areas are not necessary as they are all adequately shown on the approved plans.
36. Full details relating to the access and right turn lane need to be approved before development commences, and completed before its first use, in the interests of highway safety.
37. To prevent contamination of the water environment and in the interests of potential sites of archaeological interest, details relating to the underground fuel tanks and a scheme of archaeological investigation are also necessary. The details are required prior to commencement of development given that they involve below-ground works. I have amalgamated the two archaeology conditions and amended the wording for clarity and consistency.
38. I have added a condition to ensure that landscaping works as shown on the Planting Plan are carried out in accordance with an agreed implementation programme, and that they are maintained as approved, in the interests of area character. Likewise, a condition is required to ensure that development takes place in accordance with the recommendations to safeguard protected species as set out in section 4.3 as well as the ecological enhancements as set out in section 3.3 of the Extended Phase 1 Habitat Survey.
39. A lighting layout has been submitted, however full details are required to ensure that the installed lights are in accordance with an agreed specification and operation in the interests of area character and living conditions, and to ensure that the lighting scheme is retained and operated as permitted. A construction management plan or method statement has not been included in the Council's list of conditions however the need for such a condition has been referred to in the evidence. Such a plan would be necessary in the interests of highway safety and the living conditions of nearby occupiers.
40. For Appeal B, in addition to the five standard conditions set out in the Regulations, it is necessary to list the approved plans for certainty.

Conclusion

41. For the reasons given above, and having had regard to all other matters raised, I conclude that both appeals should be allowed.

Susan Hunt

INSPECTOR

Schedule of Conditions : Appeal A

- 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:

Site Location Plan	577-64_PL_LP01
Proposed layout	180335-03 Rev I
Proposed Elevations (100)	180335-04 Rev B
Proposed Elevations (200)	180335-05 Rev B
Proposed Shop elevations	180335-06 Rev A
Marketing Layout (Floor Plan)	19OT5(RH)-ETF-000-100
Drainage Strategy	PRMD-BSP-ZZ-ZZ-DR-C-191 Rev P5
Landscaping Plan	577-64_PL_LD9 Rev C
General Arrangement Plan	PRMD-BSP-ZZ-ZZ-DR-C-100 Rev P6
Proposed Lighting Layout	DM91
- 3) No development hereby permitted shall be commenced until a detailed scheme for the access and highway works to include the provision of a ghost island right-turn lane and pedestrian access on the A15 Peterborough Road (as shown on drawing numbered PRMD-BSP-ZZ-ZZ-DR-C-100 P6), has been submitted to and agreed in writing by the Local Planning Authority. Thereafter all required works shall be completed in accordance with the agreed details prior to the first use of the development hereby permitted.
- 4) No development shall commence until a scheme to install the underground fuel tanks has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include the full structural details of the installation, including details of: excavation, the tanks, tank surround, associated pipework and monitoring system. Thereafter, the installation of the underground tanks shall be undertaken in accordance with the agreed scheme, and all works shall be completed prior to the first use of the development. Following completion of the works tanks shall be maintained thereafter in accordance with industry best practice for the lifetime of the development.
- 5) No development shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include for trial trenching works as informed by the Heritage Statement dated May 2018 and:
 - i. the programme and methodology of site investigation and recording;
 - ii. the programme for post investigation assessment;
 - iii. the provision to be made for analysis of the site investigation and recording;

- iv. the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v. the provision to be made for archive deposition of the analysis and records of the site investigation; and
 - vi. the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- 6) The landscaping works shall be carried out in accordance with the approved scheme (Planting Plan 577-64_PL_LD9 Rev C) in accordance with an agreed implementation programme. The completed scheme shall be managed and maintained in accordance with the approved schedule of maintenance 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) Development shall take place in full accordance with the recommendations to safeguard protected species as set out in section 4.3 of the Extended Phase 1 Habitat Survey, and the ecological enhancements as set out in section 3.3 of the same document shall be implemented in accordance with the landscaping works as required by condition 6) above.
- 8) Prior to their installation, full details of the external lighting design, specification and times of operation shall be submitted to and approved in writing by the Local Planning Authority. The installation and operation of the lighting shall be in accordance with the approved details for the lifetime of the development hereby permitted.
- 9) No development shall take place 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. wheel washing facilities;
 - v. measures to control the emission of dust and dirt during construction;
 - vi. delivery and construction working hours.

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

Schedule of Conditions : Appeal B

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
- 180335-ADV1d, 180335-ADV2e, 180335-ADV3d and 180335-ADV4a.