The Planning Inspectorate

Appeal Decision

Site visit made on 1 April 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal Ref: APP/N4720/W/20/3259806
Land Off A168 Privas Way, Wetherby LS22 6RN

- 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 Mr Idris Patel of Woodman Forecourts against the decision of Leeds City Council.
- The application Ref 19/07106/FU, dated 14 November 2019, was refused by notice dated 24 April 2020.
- The development proposed is the erection of a petrol filling station with ancillary shop and food outlet, car wash, electric charge points, air and water lines, automated teller machine, underground fuel tanks and parking.

Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity, different surnames have been provided for the appellant on the application and appeal forms. However, the name of the company is consistent. Thus, for the purpose of this appeal I have taken the name of the appellant from the appeal form.

3. The Council confirm in its submission that the site is not located within a 'Green corridor' as identified in Policy ENV3 of the 'made' Wetherby Town Council Neighbourhood Development Plan 2020. Therefore, whilst cited on the Council's decision notice, it is not directly applicable to this appeal.

Background and Main Issues

4. In its submission the Council have confirmed that they accept the findings contained within the latest sequential test submitted by the appellant. Thus, the Council consider that the proposed development accords with Policies P8 and SP2 of Leeds Core Strategy 2014 (CS) regarding its out of town location.

5. Furthermore, the Council indicate that given the amended hours of operation suggested by the appellant and the details submitted in relation to noise and light, that any potential adverse effects on neighbouring residential occupiers could be mitigated through the imposition of a suitably worded condition. On the evidence before me, I have little reason to disagree with the Council on this matter and thus, consider that in accordance with paragraph 54 of the National Planning Policy Framework (the Framework), that otherwise unacceptable development could be made acceptable through the use of conditions in this instance.

6. Therefore, in light of the above matters, the main issues of this appeal are:

   i. the effect of the proposed development on the character and appearance of the appeal site and surrounding area, including the Wharfe Valley Strategic Green Infrastructure (WVSGI); and,

   ii. the effect of the proposed development on biodiversity.

Reasons

Character and appearance

7. The appeal site is currently an undeveloped parcel of land, triangular in shape. The site is located adjacent to Privas Way, set behind a mature hedgerow and grass verge. Whereas, on the opposite side of the site, the A1M is located at a lower level, with the carriageway partially screened by intervening vegetation, although an electronic sign is clearly visible from within the site.

8. CS Policy P10 seeks to provide good design that is appropriate to its location, scale and function, whilst CS Policy P12 seeks to conserve and enhance the character and quality Leeds' townscapes and landscapes, amongst other things. Saved Policies RL1 and LD1 of the Leeds Unitary Development Plan Review 2006 (UDP) seeks to safeguard the countryside and reflect the scale and form of adjacent development and the character of the area, including to protect existing vegetation, including shrubs, hedges and trees, respectively.

9. As the site is located outside any settlement boundary, it is therefore located within the open countryside. During my site visit, I noted that the section of Privas Way incorporating the site between the Waldon Road Roundabout and the bridge over the River Wharfe, benefitted from a footpath on the opposite side of the carriageway to the site, and that in both directions the road has a notable amount of greenery in its appearance through grass verges, other vegetation and mature trees. The site is located within the Council's Strategic Green Infrastructure (SGI) as defined in CS Policy SP13.

10. I accept that the proposed development would incur a loss of a field and associated vegetation, which would transform the appearance of this part of Privas Way. The site is not a 'valued' one within the meaning of national policy[1], and has no specific landscape designation. Whilst, the site still forms part of a wider countryside it is of limited inherent quality in itself, making a limited contribution. I found on my visit that Privas Way exhibited characteristics primarily associated with the surrounding highway network, including directional signs to the nearby A1M.

11. As an ordinary field on the outskirts of the settlement and adjacent to various forms of relatively modern built development, particularly that forming the highway network, I do not find that a petrol filling station and its ancillary shop/food outlet and other associated structures, typical in its design and layout, would form a strident feature, as such facilities are a common occurrence on roads exhibiting similar characteristics to Privas Way. Whilst the site is located within, and forms part of the WVSGI, for the above reasons and in this instance, I do not consider that the proposed development would undermine the WVSGI.

[1] Framework para 170 a)

12. For the above reasons, the proposed development would not significantly harm the character and appearance of the appeal site and surrounding area, including the WVSGI. Consequently, the proposed development would accord with the design, character and appearance aims of CS Policies P10, P12, SP13, Saved UDP Policies RL1, LD1 and the requirements of the Framework.

Biodiversity

13. As identified in the Preliminary Ecological Appraisal (PEA) undertaken by Pennine Ecological dated October 2019, the appeal site comprises a mix of dense scrub, unimproved natural grassland, amenity grassland, tall ruderal herb, a number of broad-leaved trees and a species poor defunct hedgerow. A number of disused and dilapidated structure from the previous allotment use were also present.

14. CS Policy G9 requires development to demonstrate that there is an overall net gain for biodiversity commensurate with the scale of the development, including a positive contribution to the habitat network through habitat protection, creation and enhancement with no significant adverse impact on the integrity and connectivity of the Leeds Habitat Network (LHN).

15. The PEA was used to form the baseline data for the Biodiversity Impact Assessment Report (BIAR) undertaken by the Environment Bank dated March 2020. The Biodiversity Metric 2.0 was then used to calculate the net loss of biodiversity units that would result from development, taking account of proposed habitat gains on site.

16. Through using the Biodiversity Metric 2.0 in the BIAR, it identified that the site has a baseline biodiversity value of 1.35 biodiversity units (BUs). It further identified that the proposed development would result in a gross biodiversity impact of 1.02 BUs. It was also identified that the creation/restoration of an area of wildflower grassland would have a projected biodiversity value of 0.11 BUs. Therefore, on balance the BIAR concludes that the proposed development would result in a net loss of -0.90 BUs. Thus, the BIAR concludes that in order to comply with CS Policy G9 and requirements of the Framework an offsite compensation scheme is required.

17. Whilst the BIAR indicates that the offsite compensation should be +1.00 BUs to include delivery of 10% net gain, I note in the wider submission that this figure is questioned by the appellant. My attention to the 2019 Environment Bill, which refers to a 10% net gain in biodiversity after development compared to the level of biodiversity prior to development taking place has been drawn to my attention. Whilst the Environment Bill is a material consideration, it is not yet law. Additionally, 2no. planning applications[2] have been cited where the appellant asserts a different approach to biodiversity and achieving a net gain were undertaken, asserting an inconsistent approach to the scheme before me.

18. However, whilst I do not have the full details of these applications, it is clear that the circumstances surrounding the applications had notable differences to the scheme before me. Therefore, on the limited details before me, I consider that the circumstances of the 2no. applications are not directly comparable and they illustrate that every proposal has to be considered on its own particular

[2] 20/01630/FU

merits. Accordingly, I find little within these cases which would lead me to alter my conclusions in this case.

19. Nonetheless, in the Offset Site Feasibility Report (OSFR) produced by the Environment Bank, a 10% increase in biodiversity is included, despite the concerns raised by the appellant. I note that the OFSR identifies LE02 Walton Road Field (LE02) as a potential offset site, which the appellant advises is owned by the owner of the freehold to the appeal site. LE02 is 0.59ha in area and comprises modified grassland. The OFSR summarises that a biodiversity value of +1.31 could be achieved for enhanced habitats and a biodiversity value of +0.39 could be achieved for enhanced linear features. Despite LE02 being located within the SGI and the LHN, I find that in principle, the improvements to LE02 would comply with the strategic aims of CS Policies G9 and SP13.

20. I have had regard to the suggested conditions provided by the Council and the comments from the appellant surrounding the imposition of a Grampian condition to secure the OFSR. I recognise that planning conditions which positively require works on land that is not controlled by the applicant and/or works to be authorised by another person or body are often unreasonable and unenforceable. Nonetheless, it may be possible to achieve the same result by imposing a Grampian condition. However, in this instance, I am not satisfied that an appropriate OFSR scheme could be secured via a Grampian planning condition.

21. The Planning Practice Guidance[3] (PPG) sets out specific circumstances where conditions should not be used, one instance is a positively worded conditions requiring the payment of money or other consideration. The PPG also advises that a positively worded condition which requires an applicant to enter into a planning obligation is unlikely to be enforceable. On the details before me, the OFSR would require the submission of a planning obligation to secure details of funding over a 30-year period, provisions for monitoring and reporting data to the Local Planning Authority and guaranteeing landowner participation, amongst other matters. Therefore, in the absence of a reliable mechanism to ensure that a net gain in biodiversity is delivered on LE02 as outlined in the OFSR, I consider that the appeal scheme is unacceptable.

22. For the reasons given above, the proposed development would significantly harm biodiversity. Consequently, the proposed development would fail to accord with the biodiversity aims of CS Policies G9, SP13 and the requirements of the Framework.

23. Saved UDP Policy GP5 has been cited on the Council's decision notice, which covers a variety of issues. However, there is no specific reference to biodiversity and therefore, I do not find it directly applicable to this appeal.

Other Matter

24. I note the dispute between the Council and the findings contained within the appellant's Preliminary Ecological Appraisal undertaken by Pennine ecological dated October 2019, particularly in respect of bats and Great Crested Newts, both of which are protected. However, as I am dismissing the appeal in any event, I have not needed to consider this matter further. I have considered this

[3] Paragraph 21a-005-20190723

appeal on its own merits and concluded that the proposed development would be unacceptable for the reasons set out above.

Planning Balance and Conclusion

25. Whilst I accept the absence of other harm arising from the proposed development, including character and appearance, and the resulting economic and social benefits of erecting a petrol station and its ancillary functions on this section of the A168, through the construction phase and subsequent operation. These factors do not outweigh my assessment on the main issues.

26. Given my findings above, the proposed development conflicts with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise. It is also at odds with the requirements of the Framework.

27. Taking all matters into consideration, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR