



Appeal Decision

Site Visit made on 26 April 2021

by Mr Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2021

Appeal Ref: APP/K2420/W/20/3264855

Unit 3 Rainbow Way, Burbage, Hinkley LE10 2FR

- 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 National Tyre Services Limited against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 20/00867/FUL, dated 26 August 2020, was refused by notice dated 21 October 2020.
 - The development proposed is for the change of use of previously consented 5500 sq ft unit from A1/B8 to use as a vehicle Repair and MOT Testing Centre, including minor external amendments to the western elevation of the unit.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by National Tyre Services Limited against Hinckley and Bosworth Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Burbage Neighbourhood Development Plan 2015-2026 (NP) has been subject to examination and is currently awaiting referendum. Policy 1 seeks to support development within the settlement boundary and policy 3 seeks to encourage business development which would be in keeping with its surroundings. Due to the advanced stage of the NP, I afford significant weight to these policies in my consideration of the merits of the proposal.

Main Issue

4. The main issue is whether the proposed development would provide a use that would support the retail character of the site and meet the 'day to day' needs of the local community.

Reasons

5. Rainbow Way consists of three modern retail blocks arranged around a shared car park forming a retail park. The buildings are subdivided into units of various sizes. Two units are currently vacant, a further two include a substantial warehouse function affording them a dual use (retail and warehouse use). Policy BUR02 of the Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016) allocates land, including the appeal site, for mixed-use consisting of employment, retail and residential

- uses. The retail park was approved¹ in 2019 for mixed use (comprising A1, A3 and B8 use).
6. Policy SA3 of the SADMP required the allocated site to include the delivery of a neighbourhood centre which comprised of A1-A5 class use. The Inspector of a recent appeal decision² for 40 dwellings opposite the site commented that this policy was consistent with the aims of the National Planning Policy Framework (The Framework). He also found that the policy clearly stemmed from a desire for the site to provide local facilities to cater for the housing and employment uses approved as part of the outline permission. He found that the retail park should principally serve the day-to-day needs of those living or working within the immediate area. I see no reason to disagree with these views. Furthermore, it seems clear to me that the intention of the allocation was to address the retail needs of the local population, rather than address broader day-to-day needs which might include the requirement for a wider range of services.
 7. Policy DM22 of the SADMP, states that neighbourhood centres will be retained. It states that the loss of a retail unit will only be permitted where it can be demonstrated that this would not reduce a community's ability to meet its day to day needs. The proposed vehicle repair and MOT testing use would, to some extent, provide a day-to-day service. However, this would not include a retail function. This would therefore be at odds with the core purpose of policy DM22 in retaining neighbourhood centres for retail activity. The previously approved, but unimplemented, use of the unit was for a tile retailer. This was a dual use including both retail and storage uses (use classes A1/B8) for a business where the two uses would be symbiotic. Therefore, although the approved use illustrated some flexibility in the Council's application of policy SA3, the approved use included a substantial and integral retail element.
 8. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (The Regulations) came into effect on 1 September 2020. As a result, the Use Class Order now places those uses that were previously within the A-class into a broader Class E. The changes mean that the range of appropriate uses, listed by policy SA3, refer to a use class that is out of date. Nevertheless, this means that some services that would have previously fallen outside of an A use Class may now be appropriate within the terms of the policy. However, the proposed use would still fall outside those uses within the broader E class use. The proposed use would not be a 'light industrial use' as advanced by the appellant, due to its general industrial nature.
 9. Furthermore, such a use would not meet the definition of any other service or industrial process at c(iii) or g(iii) of the Regulations, as it may not be appropriate and may result in environmental effects. Consequently, the proposed use would not accord with the retail character of the site or the allocation within the SADMP.
 10. Turning to market interest, the marketing undertaken has been targeted to a small group of companies. The Council indicates that the unit has only been available to the retail market for about 12 months. Also, although 'The Requirements List' may not have identified retail interest in the site, this can

¹ Planning Application Reference 18/00844/FUL

² Planning Appeal Reference: APP/K2420/W/19/3222266

only offer a snap-shot in time in gauging market interest. Therefore, the undertaken marketing appears to be both limited and relatively brief.

11. Also, there is no evidence that the unit has been advertised to a broader range of operators, within an E class use, who may now be considered to be appropriate occupiers of the unit. Furthermore, the advertising period would have coincided with effects of the coronavirus which may have affected some interest in the unit. Taking all of these points together, I am unconvinced that adequate marketing, to a sufficiently broad retail market, has been undertaken. This does not therefore demonstrate that the retail unit is superfluous to the community's ability to meet its day to day needs.
12. Consequently, the proposal would not provide a use that would support the retail character of the site or support the 'day to day' needs of the local community. The proposal would therefore be contrary to policies SA3 and DM22 of the SADMP. Also, having applied significant weight to the emerging NP, the proposal would satisfy policy 1. However, the proposal would not be in keeping with its surroundings and would not therefore accord with policy 3 of the NP.

Other Matters

13. Burbage Parish Council raised no objection to the proposal. However, an absence of an objection carries limited weight in favour of this proposal.
14. The proposal has not raised objection with respect to its impact on the character and appearance of the area or with respect to highway safety. Nevertheless, an absence of harm in these respects can only be considered as neutral factors in the planning balance.
15. The proposed use would provide a necessary service to the local population, in recognition that cars need to be serviced and tested regularly. This would be a benefit that I have ascribed moderate weight. However, this benefit would not outweigh the harm found to the retail character of the area.

Conclusion

16. The proposal would conflict with the development plan when taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Mr Ben Plenty

INSPECTOR