



Appeal Decision

Hearing Held on 20 May 2021

Site visits made on 4 May and 5 July 2021

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 14 July 2021

Appeal Ref: APP/W1850/W/20/3244253 Wolf Business Park, Ross-on-Wye HR9 5NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full and outline planning permission following a hybrid planning application.
 - The appeal is made by Lidl UK GmbH against the decision of Herefordshire Council.
 - The application Ref: 190114, dated 14 January 2019, was refused by notice dated 5 July 2019.
 - The development proposed is the demolition of the existing Wolf Business Park buildings and the erection of a new Lidl foodstore, with associated car park and landscaping, and a new access to the retained and new employment land with associated works (full application). The erection of new employment premises on the retained employment land and associated works (outline application).
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Preliminary Matters

1. The application is in a hybrid form comprising both full and outline elements as described briefly above.
2. During the course of the appeal a revised site layout for the foodstore element was submitted which omitted a number of car parking spaces. This allows the retention of trees protected by a Tree Preservation Order. No objections to the revised layout have been received and the Council is content for it to be considered as part of the scheme. I am satisfied that there would be no prejudice to any party by my acceptance of the revised layout. On that basis the Council confirmed that it no longer wished to pursue reason for refusal No 3 relating to the impact on trees.
3. It was agreed by the parties that the Ross-on-Wye Neighbourhood Plan (NP) should be afforded considerable weight given the positive vote in its favour in early May. At the hearing it was agreed that the NP would be made in due course and would become part of the development plan alongside the Herefordshire Local Plan Core Strategy (CS)¹.

Decision

4. The appeal is dismissed.

¹ The Inspector is aware that the NP has now been made and is part of the development plan.

Application for costs

5. At the Hearing an application for costs was made by Herefordshire Council against Lidl GmbH. This application is the subject of a separate decision.

Main Issues

6. The main issues in the appeal are:
 - i) Whether the Appellant has satisfied the sequential test for retail development;
 - ii) The impact of the proposed development on the vitality and viability of Ross-on-Wye town centre, and whether the impact would amount to a significant adverse impact;
 - iii) The effect of the loss of part of the overall site for employment use;
 - iv) Whether the proposed development would be of satisfactory design;
 - v) The effect of the proposal on the capacity and safety of the local highway network;
 - vi) The effect of the proposal on heritage assets.

Reasons

Sequential Test

7. It is agreed that the appeal site is in an out of centre location. In the lead up to the hearing 3 sites were promoted by the Council as more suitable alternatives to the appeal site. One of those sites, that known as Trenchard Street/Homs Road, was not pursued to any degree by the Council at the hearing. The information before me is clear that the site has a number drawbacks which would make development difficult, if not impossible in a reasonable timeframe. In addition I have been provided with correspondence relating to attempts to contact the landowner to ascertain whether the land was available. No response was received. It is therefore eminently clear to me that this site cannot realistically be said to be either suitable or available.
8. The Kyrle Street/Brookend Street land is in the ownership of more than one party and is largely comprised of car parking serving the town centre and leisure uses. There is no substantive evidence that the landowners have any interest in making the land available. In any event it would be a challenging site to develop even were Lidl to show a significant degree of flexibility in the format of a store to be located there. Furthermore I accept the representations made that access to the site by delivery vehicles would be difficult to achieve given the current layout of surrounding buildings. Lidl has demonstrably been prepared to offer flexibility in developing stores elsewhere, but I am satisfied that in relation to this site the prospects of a suitable development are slim. I accept that the site is simply not suitable for a discount store as proposed even in the event of significant flexibility of format being introduced. I do not regard the site as being suitable or available.
9. The third site, on land to the west of Ashburton Industrial Estate, could in principle take a store of the format required by Lidl. However, the site currently has no suitable access for a store, and it is apparent that there would be a need for significant investment in infrastructure. Whilst I recognise that the land was of interest to a retail company in the past that was for a much larger scheme which would be more likely to be able to carry infrastructure costs. I can readily understand why the site would hold little interest for a

discount retailer in the current circumstances. In any event the information before me also shows that there has been no response to requests seeking to ascertain the availability of the site. In short I am satisfied that this site cannot be deemed to be suitable or available.

10. There has been some suggestion that the wider area of Ashburton Industrial Estate would be a sequentially preferable location for a store. However I was told that this land is well used and is a successful employment location. There is no evidence to suggest that any land (even if deemed suitable) would be available. On the basis of the representations made in writing and at the hearing I am therefore able to conclude that the Appellant has satisfied the sequential test as set out in CS Policy E5 and the National Planning Policy Framework (NPPF) paragraphs 86 and 87.

Town Centre Impact

11. Both the CS and the NP set a requirement for a retail impact assessment to be carried out for proposed retail development of 400m² or more in Ross-on-Wye. I have been provided with assessments on behalf of the Appellant, with responses from the Council. It is fair to say that in the period leading up to the hearing the differences between the parties has reduced. I do not need to forensically examine the assessments in light of the large measure of agreement. As noted in the Statement of Common Ground the impact on comparison goods retailing is agreed at about a 2.5% trade diversion to the proposed store from the town centre. The trade diversion for convenience goods is not agreed, but the figures are similar. The Appellant assesses a diversion of just over 15% and the Council a figure of just over 17.5%. This results in combined diversion figures of just under 8% for the Appellant, and just over 9.5% for the Council.
12. As rightly identified at the hearing, the crucial matter is not the figures themselves, but what those figures mean for the health of the town centre. It is of course conceivable that the trade diversions assessed here could be of little consequence to a booming town centre. Equally a lower level of diversion could be disastrous for a struggling centre. As is often the case it is my judgement that the impact lies somewhere between the extremes.
13. Setting aside the question of the calculation of the base figures of turnover in the town centre (which since the NP referendum is agreed to encompass the Morrisons store) the most significant impact on convenience spending would be likely to be on the major players including Morrisons, Aldi and Sainsburys, but also on smaller outlets such as One Stop, Spar and Co-op. During my site visits I noted that Morrisons seems to trade strongly, as does Aldi. The situation for other stores is less sure, but overall it seems that the town centre has a number of stores attracting trade, and the presence of dedicated car parks no doubt makes the stores attractive to shoppers.
14. The very fact that the likes of Morrisons and Aldi offer convenient car parking is more likely to attract customers who will make linked trips to other town centre outlets. The degree to which that happens is not certain, but in my judgement it is likely to be significant. For that reason the diversion of trade from the larger town centre retailers is likely to impact on other more specialist shops and services, with which the town centre seems to be well supplied. As such I consider that any reduction in town centre convenience shopping is also likely

to reduce the turnover of smaller town centre shops because of that loss of linked trips.

15. It is indisputable that town centres generally are under stress to varying degrees. Ross-on-Wye may be fortunate in having a tourist base to assist, but other impacts, such as that from the covid-19 pandemic, affect everywhere. The long term effects of that, and any changed shopping habits because of it, are as yet unknown. Taking these matters in the round I am not satisfied that the level of impact on the town centre caused by the proposed store would be as limited as suggested by the Appellant. It seems to me that there is a clear likelihood that a combined impact of around 9% may well be significantly adverse. More pertinently, a convenience only trade diversion of more than 15% would surely amount to a significantly adverse impact. As such the proposed development would conflict with CS Policy E5, which seeks to avoid adverse effects on the town centre by out of centre proposals. There would also be conflict with NP Policy E2, which seeks to resist out of town retail development.

Loss of Employment Land

16. Wolf Business Park is rated as a 'good' location by the Council's assessment of its employment land. However it is acknowledged that the buildings on site are of mediocre quality. The proposal before me seeks to enable replacement of the buildings with new, purpose-built employment accommodation alongside the proposed store.
17. The situation is complicated by the recent changes to the Town and Country Planning Use Classes², which enables the change of use of premises which exist at Wolf Business Park without the need for planning permission. I accept the Appellant's assessment that much of the existing floorspace could be changed to another use, including a retail use. Indeed, part of the buildings is already so used. However, the realistic prospect of such changes taking place has not been demonstrated. There is no suggestion that the Appellant would seek to occupy the existing buildings, and no substantive evidence of any proposal for other parties to do so for other than employment use. Nonetheless it remains a possibility. Whilst I heard that the buildings are in part vacant, I find this unsurprising given the potential for short term change which could result from this proposal.
18. It is right that the change of use of the existing buildings has been largely removed from the control of the Council, and as such the Appellant argues that it fetters what can be reasonably sought to provide delivery of the proposed employment land. It is argued that the 'protectionist' theme of CS Policy E2 is out of date and in need of review. An agreed condition is suggested that would restrict the uses, but there is no mechanism to enable provision beyond what would ensue from the planning permission, if granted. In essence it would be left to the market to provide new employment buildings on the land should there be a demand for them.
19. I was not provided with any convincing evidence that there is a shortage of employment land locally and as a result I do not consider that in this case that it has been demonstrated that there would be material harm resulting from the loss of employment land to the proposed store (and I bear in mind here that

² Notably the creation of Class E

the store would itself create employment). A permission in outline for the remainder of the site, restricted by condition to employment uses, would give scope for new development if there is demand for such development. If such demand exists then the permission would be taken up. If not, then it would demonstrate a lack of demand. In those circumstances it would seem unreasonable to seek a S106 obligation to require the provision of part of the employment development prior to the store opening, since that provision may never be occupied. The obligation would therefore fail the test of necessity and would be unreasonable.

20. To draw this issue together I am not persuaded that the loss of employment land to the store would be materially harmful. Neither am I persuaded that a S106 obligation would be necessary to build out part of the retained employment development prior to the store opening. Nonetheless I agree that the proposal is in conflict with CS Policy E2, but the weight I attach to that conflict is reduced by the changes to permitted development. I accord it moderate weight at best.

Design

21. The appeal site lies just within the Wye Valley Area of Outstanding Natural Beauty (AONB). Notwithstanding that designation the NPPF is clear that it should be the aim to create well designed spaces. CS Policy requires that development proposals should demonstrate that site context should positively influence design and scale. In this locality there is a mix of uses, both for employment land and for residential purposes. The site is also close to a busy roundabout such that overall there is a distinctly urban context to the surroundings.
22. I make no comment on the potential for good design on the proposed employment land, since this would be for later consideration. However, it seems to me that the proposed store falls short of what might be expected in this locality. I acknowledge that the existing buildings on site are not attractive, despite being 'of their time'. Even so, this is an important gateway site for the town, and in part has a wooded backdrop with hills beyond. Despite explaining the design proposed, and pointing out the changes to external cladding, the proposed store remains close to what might be deemed a typical company product. It is essentially a rectangular box with an almost flat roof profile using a limited palette of materials.
23. There is little that I can discern which is specific to this location. The Appellant has demonstrably been able to adapt the standard company design in other locations, and this is a case where I consider a similar approach should have been taken. It is not for me to deliver design advice, but this gateway site to an historic town within the AONB deserves a design befitting of that context. In my judgement an opportunity for a building which would enhance the approach to Ross-on-Wye has been missed. Because the design is commonplace and bland in form, detailing and materials I consider that it is in conflict with CS Policies LD1, SD1 and SS6, and also NP Policy EN1.

Highway Impacts

24. On this issue there is little between the parties. Although the Local Highway Authority (LHA) has some reservations relating to the ability of the proposed development to be successfully integrated into the local and wider network it

was apparent at the hearing that matters could be resolved. It was agreed that suitable conditions attached to any planning permission would be able to secure a scheme which would satisfy the LHA.

25. I have noted that local residents also have concerns, particularly in relation to the capacity of the network, and the potential for the development to cause safety issues. I note that the transport assessment has concluded that the development could operate within the capacity of the network, and that no concerns were raised during a safety audit. I am therefore satisfied that there are no highway capacity or safety impediments to the proposed development provided appropriate conditions were imposed on any planning permission. Hence there is no conflict with CS Policies SS4 and MT1.

Heritage Impacts

26. No direct impacts are alleged in relation to harm to heritage assets. The Ross-on-Wye Conservation Area (CA) is some distance from the site, and there are no listed buildings or scheduled monuments which would be directly affected by the proposal. What concerns the Council is the potential for harm to heritage assets as a corollary of detrimental town centre impacts. I can understand the concern that in the event any town centre businesses were forced to close as a result of this proposal being implemented, then the CA might be affected by empty premises, and individual listed buildings might fall into disuse or disrepair.
27. This is a matter which seems to me to be allied to the vitality and viability of the town centre as a whole, and not just its heritage assets. Although the heritage assets have particular protection, and it is my duty to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area or the setting of listed buildings, there is nothing before me which points to specific threats to individual heritage assets. As I have noted above, many town centres are under stress, for a variety of reasons. It is therefore not possible, in my judgement, to reach a discrete conclusion that there would be likely to be harm to heritage assets as a result of the proposed development. As such I find no conflict with development plan policies which seek to protect heritage assets.

Other Matters

28. The appeal site is located within the River Wye Special Area of Conservation (SAC) impact risk zone relating to discharges of water or liquid including to mains sewer. An appropriate assessment is therefore required. The proposed development would discharge foul water into a mains sewer and surface water into an underground attenuation reservoir. These measures can be secured by condition and would mitigate the risk of discharges such that there would be no likely significant effect on the SAC. In this I agree with the appropriate assessment previously carried out by the Council and endorsed by Natural England.

Planning Balance

29. I have found that the sequential test has been satisfied, but that there is a likelihood of a significant adverse impact on the vitality and viability of Ross-on-Wye town centre. Paragraph 90 of the NPPF indicates that in these circumstances the proposal should be refused planning permission. However,

that is not to say it must be refused. In this instance I have also found that the proposal would be in conflict with retail policies of the development plan. The design of the proposed store would be unacceptable in this location and this too conflicts with the development plan. The loss of employment land conflicts with the development plan, but the weight I give to this conflict is reduced as explained above. I do not find harm in relation to highway and heritage issues.

30. Taking all of these matters into account there are 2 fundamental issues which point to the appeal being dismissed. These are the conflict with the development plan and the substantial weight attaching to the advice of the NPPF on the retail position. The matters brought in support of the application do not amount to material considerations sufficient to justify a decision other than in accordance with the development plan.
31. For the reasons given above I conclude that the appeal should be dismissed.

Philip Major

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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