



Appeal Decision

Site visit made on 26 October 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th November 2021

Appeal Ref: APP/J1915/W/21/3272107

Bircherley Green Shopping Centre, Hertford SG14 1BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Alan Ward against the decision of East Hertfordshire District Council.
 - The application Ref: 3/19/2614/FUL, dated 17 December 2019, was approved on 6 November 2020 and planning permission was granted subject to conditions.
 - The development permitted is a mixed use re-development comprising partial demolition of existing buildings and replacement with 3419 square metres of commercial floorspace (Use Classes A1-A4, D1), an 86-bed hotel (Use Class C1), 98 residential apartments (use class C3), alterations to an existing car park, new bus station facilities and associated works and improvements.
 - The condition in dispute is No 15 which states that: *Prior to the first occupation of any part of the development hereby permitted, a Delivery and Servicing Management Plan, as required in relation to the hotel, commercial units and residential units, shall be submitted to and approved in writing by the Local Planning Authority. The Delivery and Servicing Plan shall include restrictions on commercial delivery times to between 07.00hrs and 10.00hrs on all days to the riverside and pedestrianised retail area, vehicle tracking and contain the delivery and servicing requirements (including refuse collection) for the proposed uses, a scheme for coordinating deliveries and servicing for the proposed development, areas within the development site that will be used for the loading and manoeuvring of delivery and service vehicles and access to/from the site for delivery and servicing vehicles such plans. Once agreed the development shall be constructed to enable the agreed arrangements to be implemented and shall subsequently be operated as agreed.*
 - The reason given for the condition is: *In the interests of amenity of the public shopping area and to reduce conflict with users and to ensure an adequate level of amenity for nearby residents, in accordance with policy EQ2 of the East Herts District Plan 2018.*
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Decision

1. The appeal is allowed and the planning permission Ref: 3/19/2614/FUL for a mixed use re-development comprising partial demolition of existing buildings and replacement with 3419 square metres of commercial floorspace (Use Classes A1-A4, D1), an 86-bed hotel (Use Class C1), 98 residential apartments (use class C3), alterations to an existing car park, new bus station facilities and associated works and improvements at Bircherley Green Shopping Centre, Hertford SG14 1BN granted on 6 November 2020 by East Hertfordshire District Council, is varied by deleting condition 15 and substituting for it the following condition:

- 1) Prior to the first occupation of any part of the development hereby permitted, a Delivery and Servicing Management Plan, as required in relation to the hotel, commercial units and residential units, shall be submitted to and approved in writing by the Local Planning Authority. The Delivery and Servicing Management Plan shall include the hours of the commercial delivery times on all days to the riverside and pedestrianised retail area, vehicle tracking and contain the delivery and servicing requirements (including refuse collection) for the proposed uses, a scheme for coordinating deliveries and servicing for the proposed development, areas within the development site that will be used for the loading and manoeuvring of delivery and service vehicles and access to/from the site for delivery and servicing vehicles. The development shall be carried out in accordance with the approved details and shall be thereafter operated as approved.

Procedural Matter

2. The revised National Planning Policy Framework (revised Framework) has been published since the appeal was submitted. Both main parties have had the opportunity to comment on this matter during the course of the appeal. I have considered it in my decision.

Background and Main Issues

3. The appeal concerns the site of a former shopping centre. The appellant applied to the Council to redevelop the site for a mixed use development. This included commercial floorspace, amongst other uses.
4. The Council granted planning permission¹ for the development. In approving the application, the Council applied condition 15 which concerned the submission of a Delivery and Servicing Management Plan. This is to include restrictions on commercial delivery times to between 07.00 hours and 10.00 hours on all days to the riverside and pedestrianised retail area approved as part of the development, amidst other matters.
5. There is no dispute over the need to submit a Delivery and Service Management Plan. The appellant wishes for the condition to be varied to meet the needs of the potential occupiers of the commercial floorspace, in particular prospective retailers, by way of providing more flexibility with the commercial delivery times to be agreed with the Council. The Council has concerns this would not accord with the ambitions for the redevelopment of the site because it would create conflict between delivery and servicing vehicles and other users, especially pedestrians. The Council has also referred to living conditions matters.
6. As a consequence, the main issues are the effect of the proposal on (i) the enjoyment of the use of the public shopping area, in particular with regard to the potential for conflict with other users; (ii) the living conditions of the occupiers of nearby residential properties, in particular by way of noise.

¹ Council ref: 3/19/2614/FUL

Reasons

Use of the Public Shopping Area

7. The appeal site comprises a large area of land within Hertford Town Centre. It was evident from my site visit that part of the site has already been cleared and some of the construction works were underway. The site also contains the bus station for the town and an adjacent multi-storey car park.
8. The site bounds the River Lea to the north where there is an associated paved walkway, although this is not currently accessible. On the opposite side of this canalised waterway, there is a public house and a terrace of cottage-like residential properties. There are more modern residential properties on Bircherley Street, to the east of the site. Railway Street to the south is more commercial in nature. It leads into the part of the town centre close to the site that contains numerous shop units, including a number that are occupied by national retailers. There is also a pedestrian approach into the site from this direction.
9. The Council's Hertford Town Centre Urban Design Strategy (2016) (Design Strategy) identifies the site as a key opportunity site, including by way of turning the riverside into an attractive destination, attracting retail and extending the leisure offer. The Design Strategy includes creating active frontages along the river.
10. The approved development provides for such an approach by way of a layout that shows units being orientated towards the river with a frontage of hard landscaping. This open area would act as a shared space between pedestrians and service and delivery vehicles. There would also be outdoor seating in this area, along with some planting. Service and delivery vehicles would also be able to utilise the central pedestrian walkway that would connect the Railway Street approach to the riverside.
11. As approved, all commercial deliveries could only take place within a 3 hour period. Whilst the Council consider that the times avoid periods when people would be typically looking to visit the town centre, it would mean that pedestrians during those times would face potentially a concentration of such vehicles vying to service the proposal. This time of day may not be the busiest, but it would still be at a time when pedestrians may visit coffee shops, or take breakfast in a café type use. The approved layout suggest that the riverside and pedestrian walkway areas would ably attract these types of retail use. There would also be the likely presence of those people on their way to employment in the town centre.
12. Nor is it proposed by the appellant that there would be no controls over the hours of the commercial delivery times. As such, the Council would still have the potential to seek to control such hours to minimise conflict through its required approval of the Delivery and Servicing Management Plan. Clearly pedestrian safety needs to be a priority, but in a way that does not cause undue conflict during all times when commercial deliveries would be permitted.
13. Accordingly, it is not apparent why the proposed change to the condition would lead to accidents or hazard because there would still be controls over the hours and as the approved layout would remain unaltered. The same applies

concerning drop off and pick up areas for riverboat trips that have been referred to in the submissions.

14. Such an approach would also not have the effect of making the approved development obviously less attractive to users. The built aspects of the approved development and uses would remain, as would its riverside facing nature and the associated frontage. It would still create a high quality and active public realm that would align with the objectives and aims of the Design Strategy. There would in all likelihood still be times when the approved development would be free of such vehicles.
15. The approved development also includes service yard provision. Based on the evidence before me, this would not serve all of the commercial premises. Utilising the multi storey car park would also not provide a practical alternative as its use is for the parking of cars. As a consequence, these matters do not alter my conclusion.
16. Supporting the vitality and viability of town centres is also a planning consideration that attracts weight under the revised Framework. A condition that allows the hours of the commercial delivery times to be agreed would also allow for this consideration to be taken into account in deciding on what those hours should be, also having regard to the effect on other users.
17. Taking the above considerations together, I conclude that the proposal would not have an unacceptable effect on the enjoyment of the use of the public shopping area, in particular with regard to the potential for conflict with other users.

Living Conditions

18. The nearest existing residential occupiers to the proposal would be those on the opposite side of the River Lea to the site and on Bircherley Street, as well as where there may be residential accommodation above other uses in this part of the town centre. I am mindful of the proximity of these residential properties to the site, in particular the properties that would face the riverside frontage area, and of the experiences that some local residents have had in relation to delivery noise. There would also be future residential occupation within the site, as part of the overall redevelopment.
19. A condition that allows the hours of the commercial delivery times to be agreed would also be able to control the hours in the interests of minimising the effects of noise. Noise from refrigerated units and cage movements would also be able to be considered in this way. This should give local residents some assurance that the effect on their living conditions would not be unacceptable.
20. A number of other noise matters have been raised which lie beyond the scope of the condition, especially in relation to other aspects of the proposed redevelopment. These lie outside of what I can reasonably consider in my decision as it concerns condition 15.
21. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of nearby residential properties, in particular by way of noise. Thus, it would comply with Policy EQ2 of the Council's East Herts District Plan (2018) where it refers to relevant noise pollution matters, including minimising the impact of noise on the surrounding environment, the

proximity of noise sensitive uses and the impact on health, amongst other considerations.

Other Matters

22. I sought the views of the main parties in respect of the wording of the revised condition that is set out in my decision paragraph. In response, the appellant raised a number of matters that were not presented in the original appeal submission. In particular, the appellant sought for the condition to differentiate between the proposed hotel and the remainder of the scheme.
23. It is however important that what is considered by an Inspector is essentially what was considered by the local planning authority, and on which interested parties' views were sought. This would not be the case, if the condition was altered in this way. Moreover, there are alternative means of dealing with this issue through the planning system rather than evolving what is proposed through the appeal process. It is ultimately a matter for the appellant and the Council.
24. The Council has made me aware that a previous permission for a development of the site also applied the same hours for commercial deliveries, which it is said the appellant would have been aware of. My decision-making is not fettered in this way because I have considered the proposal before me with regard to the tests for conditions that are set out in paragraph 56 of the revised Framework.
25. That the appellant did not submit an application to the Council to vary the condition also has a limited bearing because there is the right to appeal against the grant of planning permission for development subject to conditions which the appellant objects to.
26. The site lies within the Hertford Conservation Area. The proposal would preserve or enhance the character or appearance of the conservation area because enabling the hours of the commercial delivery times to be agreed would have a limited impact in this regard.

Condition

27. I have imposed a condition that requires the submission of the Delivery and Servicing Management Plan. Such details to be agreed shall include, amongst others, the hours of the commercial delivery times. This is in the interests of the enjoyment of the public shopping area, limiting the conflict with other users and protecting the living conditions of the occupiers of nearby residential properties.
28. This condition replaces condition 15 on the planning permission that is the subject of this appeal. The other conditions on this permission remain unaltered and should be read alongside my decision.

Conclusion

29. The proposal would not have an unacceptable effect on the enjoyment of the use of the public shopping area, in particular with regard to the potential for conflict with other users and on the living conditions of the occupiers of nearby residential properties, in particular by way of noise. I have considered all matters that have been raised but none would demonstrate that condition 15 is

reasonable and necessary. It would not comply with the tests for planning conditions that are set out in the revised Framework and the related advice in the Planning Practice Guidance concerning the application of these tests.

30. Accordingly, I conclude that the appeal should be allowed and condition 15 should be removed, subject to the imposition of a condition that allows the hours of the commercial delivery times to be agreed as part of the submission of the Delivery and Servicing Management Plan.

Darren Hendley

INSPECTOR