



Appeal Decision

Site visit made on 23 November 2021

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2022

Appeal Ref: APP/M4510/W/21/3281158

**Newbiggin Hall Shopping Centre, Trevelyan Drive, Newbiggin Hall,
Newcastle Upon Tyne NE5 4BR**

- 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 Whiteley (Resilienti Ltd) against the decision of Newcastle Upon Tyne City Council.
 - The application Ref 2020/1703/01/DET, dated 1 November 2020, was refused by notice dated 8 June 2021.
 - The development proposed is erect six mixed use kiosks (Use Classes E(a) and/or E(b) and/or E(c) and/or E(d) and/or E(e) and/or F2(a) and/or hot food takeaway) totalling 178 sqm of new floorspace.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposed development upon:
 - The character and appearance of the surrounding area;
 - Public safety;
 - Trees; and
 - Servicing and car parking.

Reasons

Character and appearance

3. The appeal site forms part of a wider area of landscaped open space alongside Newbiggin Lane and the recently redeveloped Newbiggin Hall Shopping Centre complex and separate doctor's surgery. The wider area is residential in character, largely comprised of low-rise, mid- to late twentieth century housing set within an open, and open plan, setting.
4. For a considerable portion of its length between the A696 to the north and the B6324 in Westerhope to the south, Newbiggin Lane is characterised by its generous grass verges, with residential development set back from the roadside within an open, and open-plan grassed landscape setting. Along the roadside run length of hedges and trees which together create a pleasant and spacious setting.
5. I am advised that the recently redeveloped shopping centre and adjacent doctor's surgery are part of a masterplan for the redevelopment of this part of

Newbiggin Lane. The area around and between these recently completed buildings is entirely in keeping with the prevailing character and appearance of the wider area and the open and spacious setting that I saw and experienced when visiting the site and its surrounds.

6. The proposed development of a single storey building to house 6 'kiosks' of mixed uses would add a 'limb' to the L-shaped shopping centre, creating a broadly U-shaped court of buildings and partly closing off the western end of the existing car parking area / building court. The building itself would not however be a particularly large building. Indeed, it would be a relative squat single storey building with its flat roof giving it a scale, character and consistent with the existing shopping centre buildings.
7. However, I agree with the Council that the siting and location of the proposed building would be problematic. Due to the alignment of Newbiggin Lane relative to the shopping centre, a corner of the proposed building would be immediately adjacent to the rear edge of the sweeping pavement. Where the existing buildings maintain a respectful set-back from Newbiggin Lane consistent with the prevailing open layout along much of its length, the proposal would sever the continuity of the generous grass verge and open setting along the eastern side of Newbiggin Lane.
8. The incorporation of areas of hardstand forecourts around the two outward facing elevations of the proposed building, and the awkward relationship between the corner of the building and Newbiggin Lane would serve to further emphasise the building's incongruous and harmful relationship with its surrounds. Moreover, because of the gentle sweep of Newbiggin Lane at this point and its location at a high point along its length, the proposed building would be in direct line of sight on the outside of the bend in a prominent location afforded lengthy views in both directions.
9. Whereas the existing shopping centre buildings and, to an extent, even the larger and more substantial doctor's surgery, are recessive features set back from the road, the proposed building would be intrusively sited, visually prominent and would, as the Council argue, dominate the site's Newbiggin Lane frontage. It is precisely because Newbiggin Lane is relatively wide and open in scale and character with substantial tree and hedge planting that the proposed building would be a harmfully incongruous feature. Rather than giving Newbiggin Lane the capacity to absorb development like the one proposed, as the appellant seeks to argue, it is these very factors that highlight the proposed development's harmful impact on the character and appearance of this part of Newbiggin Lane. The examples cited by the appellant to demonstrate otherwise merely serve to highlight the prevailing character and layout and the examples as the exceptions that prove the general rule.
10. The Council's Core Strategy and Urban Core Plan (CSUCP) policy CS15 and Development Action Plan (DAP) policy DM20 set out the Council's approach to good place-making and the delivery of high-quality development. To this end, proposals must respond positively to local distinctiveness and character, demonstrate a positive response to, amongst other things, topography and natural and built landscapes, take account of the area and location and incorporate hard and soft landscaping as an integral part of design. The proposal would, for reasons set out above, fail to do so and as such would be

contrary to the aims and provisions of CSUCP policy CS15 and DAP policy DM20.

Public safety

11. Not only would the proposed building sever the expansive open roadside verge along Newbiggin Lane's eastern side, erode the area's open and spacious character and diminish the presence of the protected group of trees within the area as described above, it would also reduce the openness of, and visibility into, the shopping centre as a whole. Whilst the degree to which the existing layout allows for natural surveillance is perhaps slightly overplayed by the Council, I nevertheless agree that the proposal would not fully align with the CSUCP policy CS15 or DAP policy DM20 aims of providing safe and inclusive environments that reduce crime and disorder.
12. The nearest residential properties on the far side of Newbiggin Lane are some distance away and to suggest that they provide meaningful natural surveillance of the shopping centre is perhaps a stretch. However, Newbiggin Lane itself provides a closer and clearer vantage point towards the existing car park, the field of view of which would be substantially reduced as a consequence of the proposal. Furthermore, the introduction of a series of right-angled corners around the building's perimeter would result in the creation of blind-spots for those using the footpath network to access the shopping centre, or to travel through the area.
13. I accept that the proposal would incorporate three active frontages, two of which would be on the outward facing elevations of the building. However, these would only be active for as long as they are open. Whether or not existing anti-social behaviour is based upon anecdote or recorded fact, taking the above factors together, I conclude that the proposal would undermine and reduce opportunities for natural surveillance. Furthermore, the resulting layout would fail to provide a safe or inclusive form of development and I am not persuaded that it would contribute effectively to delivering the reduction in crime and disorder or safe and secure buildings that CSUCP policy CS15 and DAP policy DM20 seek to achieve. The proposal would be in conflict with these elements of CSUCP policy CS15 and DAP policy DM20.

Trees

14. The group of trees in the area between the existing shopping centre and the doctor's surgery are a distinctive feature of the shopping centre. They are also a distinctive and visible feature within the wider Newbiggin Lane environment contributing to the pleasantly landscaped setting of Newbiggin Lane and are protected by a Tree Preservation Order (TPO).
15. The trees stand within an area of level, open grassland between the existing shopping centre car park and existing pedestrian paths. At present there is a generous stand off on all sides between the group of trees and nearby hard surfaces and buildings. However, the proposed building, an area of forecourt, a re-aligned pedestrian path and an expanded area of car parking are all proposed to be constructed close to the group of trees.
16. The status of the trees remains a matter of dispute between the parties. So too the matter of car parking, which I will consider in more detail below. However, even if the Council were to take the approach suggested by the

appellant and remove the additional parking spaces from the northern side of the existing car park, the building, forecourt and re-aligned pavement would remain very close to the group of protected trees.

17. The appellant relies upon an Arboricultural Impact Assessment¹ dated March 2018 and based upon a different scheme to that currently before me. In this respect, I concur with the Council's concerns that it has not been adequately demonstrated that the proposed development would not compromise the integrity, health or longevity of trees within the group protected by the TPO.
18. Nor have I been presented with any compelling evidence that the group of trees, or part thereof, have been authorised for removal. I note that part of the group in question are shown to be removed on plans that have been approved by the Council in respect of other permissions² but I find the Council's argument that the trees fall outwith the scope of that permission² and plan to be persuasive.
19. Nor am I persuaded that the use of a condition to prohibit the implementation of this element of the proposal would be appropriate. Even if I were to conclude that it would be, the harm I have identified above in respect of character and appearance is compelling and carries significant weight in my conclusions. In any event, in considering the proposal before me and in the context and circumstances present at the time of my visit and consideration of this matter, this is not a material consideration to which I give any significant weight.
20. Additional planting is indicated in areas around the shopping centre and the protected group of trees which would complement the existing landscape character of the area around the shopping centre and supplement the group of protected trees. However, this would not be sufficient to offset the visual effect of the removal of part of the protected group nor, more significantly, would it soften the harmful and strident visual impact of the proposed kiosk building upon the character and appearance of the surrounding area.
21. Taken together, these short-comings and the proposal's erosion of the original shopping centre landscaping scheme are such that I cannot be certain that the proposal would not cause harm to protected trees within a wildlife corridor, to the character, appearance and integrity of the surrounding area by virtue of the proposal's impact thereon. CSUCP policy CS18 and DAP policy DM28 together seek to secure an appealing natural environment by, amongst other things, protecting, enhancing and managing trees, open space and landscape features. The landscaping proposals set out within the scheme would fail to offset the harmful impact of the proposed kiosk building and would not enhance the quality or character of the development or the surrounding area. The proposal is therefore contrary to CSUCP policy CS19 and DAP policy DM28.

Servicing and car parking

22. The existing shop units are serviced via a service area at the rear of the units, to which all five units have direct access from the building. However, the proposed building and the six kiosks would not have direct access to this area. Although a pathway would be created around the perimeter of the existing

¹ Dendra Consulting Ltd dated 21 March 2018

² LPA Ref No: 2019/0671/01/DET

- building, access to the kiosks, particularly but not restricted to, the unit on the north facing elevation, would be tortuous, lengthy and inconvenient.
23. The concern, rightly in my view, is that servicing of these units would be taken from the car park itself or from Newbiggin Lane in locations closer and more convenient to those making deliveries. At busier times, or depending upon the distribution of parked cars within the car park, there would be conflict as a result. Furthermore, the scope of the proposed uses, particularly as the development description includes possible hot food takeaway uses, adds to my concerns in respect of short-term movement and parking of vehicles.
24. Whilst the Council have expressed concern about indiscriminate staff parking within the service area, it seems to me that this is a management issue rather than a fundamental shortcoming in planning terms relating to the existing arrangements. However, this does not negate my concerns regarding the practicality of, or arrangements for, the servicing of the proposed additional units or the absence of information to indicate how and from where servicing would be carried out.
25. Although the Council have also expressed concern that insufficient information was submitted to allow proper consideration of the parking requirements of the additional kiosk units, the appellant has provided a range of parking requirement scenarios. On the face of it, whilst these suggest that an additional ten parking spaces would be sufficient to cater for a 'worst case' scenario of maximum parking requirement by use. However, failure to demonstrate absence of harm relating to the protected trees, and the knock-on effect that this would have on car parking provision, is such that I cannot conclude that the proposal would make adequate provision for car parking, or that it would not result in an adverse impact on existing car parking provision. Nor am I able to conclude that the proposed development would make adequate provision for the satisfactory servicing of the units proposed in this instance.
26. Thus, for these reasons the proposal would be in conflict with CSUCP policy CS13 and DAP policies DM12, DM14 and DM34. Together these policies seek to ensure that developments contribute towards sustainable economic growth by, amongst other things, ensuring development connects safely to existing transport networks, makes adequate provision for vehicle parking and servicing and loading. It has not been adequately demonstrated that the proposal would achieve these aims.

Conclusion

27. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR