



Appeal Decision

Site visit made on 29 March 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 April 2022

Appeal Ref: APP/P1750/W/21/3273646

Units 2A and 3, Blackwater Shopping Park, Farnborough, GU14 8BL

- 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 Lothbury Property Trust against the decision of Rushmoor Borough Council.
 - The application Ref 20/00149/FULPP, dated 21 February 2020, was refused by notice dated 21 January 2021.
 - The development proposed is refurbishment and amalgamation of existing Units 2A & 3 Blackwater Shopping Park, including removal of existing mezzanine floors, revised car parking and servicing arrangements; relief from Condition No. 4 of planning permission 93/00016/FUL dated 10 January 1994 to allow use as a foodstore (Use Class A1) with new mezzanine floor to provide ancillary office and staff welfare facilities, ancillary storage and plant machinery areas; use of part of new foodstore unit as self-contained mixed retail and cafe/restaurant use (Use Classes A1/A3); relief from Condition No. 17 of planning permission 93/00016/FUL dated 10 January 1994 to allow extended servicing hours for the new foodstore unit of 0600 to 2300 hours Monday to Saturday (including Bank Holidays) and 0700 to 2000 hours on Sundays; loss of existing parking spaces to front of proposed foodstore to provide new paved area with trolley storage bays and cycle parking; installation of new customer entrances to new units; widening of site vehicular access to Farnborough Gate road to provide twin exit lanes; and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for refurbishment and amalgamation of existing Units 2A & 3 Blackwater Shopping Park, including removal of existing mezzanine floors, revised car parking and servicing arrangements; relief from Condition No. 4 of planning permission 93/00016/FUL dated 10 January 1994 to allow use as a foodstore (Use Class A1) with new mezzanine floor to provide ancillary office and staff welfare facilities, ancillary storage and plant machinery areas; use of part of new foodstore unit as self-contained mixed retail and cafe/restaurant use (Use Classes A1/A3); relief from Condition No. 17 of planning permission 93/00016/FUL dated 10 January 1994 to allow extended servicing hours for the new foodstore unit of 0600 to 2300 hours Monday to Saturday (including Bank Holidays) and 0700 to 2000 hours on Sundays; loss of existing parking spaces to front of proposed foodstore to provide new paved area with trolley storage bays and cycle parking; installation of new customer entrances to new units; widening of site vehicular access to Farnborough Gate road to provide twin exit lanes; and associated works at Units 2A and 3, Blackwater Shopping Park Farnborough, GU14 8BL in accordance with the terms of the application, Ref 20/00149/FULPP, dated 21 February 2020, subject to the conditions in the attached schedule.

Preliminary Matter

2. The description of development was changed during the determination of the application to that set out in the heading above.

Main Issue

3. This is whether the proposal would meet the sequential test for main town centre uses set out in the National Planning Policy Framework and whether it would have a significant adverse impact on the vitality and viability of Farnborough town centre.

Reasons

Sequential test

4. Blackwater Shopping Park is about 2km from Farnborough town centre in an out of centre location and at the edge of the urban area. The proposal relates to adjoining units at the Park. The existing floorspace would be refurbished and amalgamated to create two units with a different configuration. The larger would be a discount foodstore of 1,866 sq m in total. This would be occupied by Aldi. A smaller unit of 186 sq m would be used as a mixed retail and restaurant/café. Other works are also included as per the description of development above.
5. Policy SP2 of the Rushmoor Local Plan 2014-2032 (adopted in 2019) sets out a strategy for the revitalisation of Farnborough town centre. As part of the spatial strategy for Rushmoor set out in Policy SS2, town centre uses will be located within Aldershot and Farnborough town centres. New retail development must protect or enhance the vitality and viability of those centres and will be focussed within their primary shopping areas. If such sites are not suitable, available and viable, locations for retail development will be assessed sequentially, in accordance with national policy.
6. The sequential test for main town centre uses that are neither in an existing centre nor in accordance with an up-to-date plan is required by paragraph 87 of the National Planning Policy Framework. Such uses should only be considered for out of centre sites if suitable town centre or edge of centre locations are not available (or expected to become available within a reasonable period). Advice on the use of the sequential test in decision-making is given in the Planning Practice Guidance (PPG) on *Town centres and retail*.
7. The small food and beverage unit proposed would primarily serve existing customers at Blackwater as an ancillary use and therefore has a specific locational need. Therefore only the discount foodstore should be considered when applying the sequential test.
8. A sequential site assessment has been undertaken and updated for the appeal. All the sites reviewed have been ruled out bar one. The sites in Farnborough deemed not suitable, viable and available to accommodate the proposed development include those at Block 3 Kingsmead Square, Civic Quarter south of Queensmead and Units 3 and 4 Horizon Retail Park. This position is agreed between the parties and there is no reason to question it based on the evidence provided. The Council also confirms that no other potential sites have been identified since the application was refused.

9. However, Units 3 & 4 at Solartron Retail Park were given planning permission for use as a foodstore in September 2020. The site is within the town centre and constitutes an edge of centre site. Given its size and layout it is suitable for the proposed discount foodstore and would be in a sequentially preferable location to the Blackwater Shopping Park. The only issue is therefore whether it is "available".
10. In dealing with this question the parties have referred to caselaw. Principally *Aldersgate Properties Ltd. v. Mansfield District Council and another* [2016] EWHC 1610 (Admin) and *Sainsburys Supermarkets Limited v London Borough of Hillingdon and others* [2015] EWHC 2571 (Admin). In *CBRE Lionbrook (General Partners) Ltd v Rugby Borough Council and another* [2014] EWHC 646 it was stated that availability is a matter of planning judgement.
11. When the planning application at Solartron was being considered, a commitment to occupy it was given by Lidl. Evidence has been provided of how that intention has been taken forward. However, more to the point, the refurbishment of the units has now commenced and banners announce that work is proceeding on a new Lidl store. In the light of this there is little doubt that a new foodstore will soon be opening here.
12. The *Mansfield* judgment does not support the contention that the units at Solartron only cease to be available once they have been occupied. That approach would lead to perverse results in that the unit would be treated as available the day before the store opens but would not be available a day later. The scenario painted by the judge in paragraph 42 is not directly relevant because that relates to a site where another retailer has retained a site to use it for retailing and not one where, as here, a use is about to commence. In this case it is clear that the Solartron site is not realistically available.
13. Therefore, there are no available sequentially preferable sites suitable for the proposed development. The sequential test is passed.

Vitality and viability of Farnborough town centre

14. Policy LN7 requires an impact assessment on Farnborough town centre to be undertaken for retail development not in the primary shopping area above the threshold of 1,000 sq m gross floorspace. Paragraph 90 of the Framework gives details of what should be assessed and the PPG contains a checklist of steps to be taken.
15. The appellant's retail analysis has been updated for the appeal. This shows that there is more than sufficient capacity in Farnborough to support discount foodstores at both the appeal site and at Solartron. In any event, the evidence is that the Lidl store will soon be opening. As a consequence the proposal would have no effect on investment within the town centre. Furthermore, it is accepted that the cumulative diversion of trade to two new stores would not prevent existing large supermarkets in the town from trading viably. Neither is it expected that small convenience shops would close.
16. Therefore there would not be a significant adverse impact on the vitality and viability of Farnborough town centre in terms of any loss of customer choice or any increase in shop vacancy rate.

Other Matter

17. A unilateral undertaking has been completed which secures contributions and obligations in respect of the implementation, evaluation and monitoring of a Travel Plan. The terms are agreed by Hampshire County Council. This is required to comply with Local Plan Policy IN2 which seeks to promote opportunities for sustainable transport modes. It is therefore necessary to make the development acceptable in planning terms.

Conditions

18. In the interests of certainty the approved drawings should be specified. A construction management plan is required to minimise disruption to those using the Shopping Park and living nearby. To ensure that the units function properly and respect other users and occupiers, details of the management of the external areas should also be agreed. For the same reason, the turning/manoeuvring and loading/unloading spaces within the rear service area should be provided.
19. The installation of an acoustic fence and other noise control measures are required to protect the living conditions of residents due to the additional delivery hours proposed. Conditions are therefore necessary to ensure that these are undertaken as recommended in the Noise Assessment and to limit servicing hours to those applied for. Equipment capable of producing sounds audible outside the site should also be precluded for reasons of amenity. No extraneous items or materials should be kept or stored outside the units on visual grounds.
20. The wording of the conditions suggested by the Council has been adjusted where necessary in the interests of clarity.

Conclusion

21. The proposed development has passed the sequential test for out of centre retail sites and would not have a significant adverse impact on the vitality and viability of Farnborough town centre. There would be no conflict with relevant development plan policies which seek to protect and enhance the town centres in the Borough. The proposal would accord with the development plan and there are no other material considerations which indicate that a different decision should be reached.
22. Therefore, for the reasons given, the proposed development is acceptable and the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos 1001-PL-B; 1002-PL; 1003-PL; 1004-PL-A; 1005-PL; 2001-PL-A; 3001-PL; 3501-PL and 4001-PL.
- 3) No development shall start on site until a Construction Method Statement has been submitted to and approved in writing by the local planning authority, which shall include:-
 - (a) A programme for the approved construction works;
 - (b) The arrangements for deliveries associated with all construction works;
 - (c) Access and egress for plant and machinery; and
 - (d) The location of temporary site buildings, compounds, construction material and plant storage areas.

Works on site in connection with implementing the development hereby permitted shall only take place in accordance with the approved Construction Method Statement.
- 4) The foodstore hereby permitted shall not be brought into use until details for the management of:-
 - (a) shopping trolleys;
 - (b) the customer parking area; and
 - (c) the modified service area (including the amended servicing hours for the foodstore hereby permitted)

have been submitted to and approved in writing by the local planning authority. Shopping trolleys, the customer parking area and the service area shall subsequently be managed in accordance with the approved management measures at all times.
- 5) The acoustic fence hereby permitted shall be fully installed in accordance with the details recommended in the Cole Jarman Noise Assessment 19/0010/R2-1 prior to the first use of the foodstore hereby permitted and thereafter retained. Noise emission mitigation/control measures recommended in the Cole Jarman Noise Assessment 19/0010/R2-1 relating to the switching-off of lorry refrigeration units whilst in the service area and restricted noise emission levels from plant and equipment at the premises shall also be implemented in full prior to the first use of the foodstore hereby permitted and these measures shall thereafter be retained.
- 6) The foodstore hereby permitted shall not be serviced outside the following times:- 0600 to 2300 hours Monday to Saturday (including Bank Holidays) and 0700 to 2000 hours on Sundays.
- 7) With the exception of designated refuse containers/storage areas, pallet storage areas or plant enclosure, no installation, display or storage of goods, plant, equipment or any other materials shall take place other than within the building.

- 8) No sound reproduction equipment shall be installed which conveys messages, music or other sounds which are audible outside the premises.
- 9) The turning/manoeuvring and loading/unloading spaces within the revised Shopping Park service area shown on the approved drawings shall be clearly marked out prior to the first use of the foodstore hereby permitted and thereafter kept available at all times for the purposes for which they have been identified.