



Appeal Decision

Site visit made on 1 March 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2022

Appeal Ref: APP/W4325/W/21/3282452

**Unit 1 and Unit 2, Tebay Retail Park, 2 Tebay Road, Bromborough
CH62 3AB**

- 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 Threadneedle Property Unit Trust against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/20/01686, dated 12 November 2020, was refused by notice dated 9 April 2021.
 - The development proposed is the change of use of Unit 1 (trade warehouse) and amalgamation with Unit 2 (retail showroom) to create a single retail unit for the sale of food and non food goods.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the date of the Council's decision, some of the emerging policies referenced in the Decision Notice have been superseded as a consequence of the preparation of the Submission Draft of the Wirral Plan 2021-2037 as the emerging local plan. The plan is in draft form and the policies within it are yet to complete Regulation 19 consultation. Accordingly, they are of limited weight in the determination of the appeal.
3. From the time of the Council's consideration of the planning application, the appellant has had the opportunity to carry out traffic and parking counts at and close to the site. According to the appellant, the timing of the original submission prevented this from occurring due to coincidence with the lockdowns associated with the Covid-19 pandemic. As the Council and third-parties have had the opportunity to respond to the updated information and it does not change the appellant's conclusions, I do not consider that any party will be prejudiced if I take it into account.

Main Issues

4. The main issues are the effects of the proposal on highway safety and whether or not the site would provide a suitable location for food and non-food retail.

Reasons

Highway safety

5. The proposed change of use would introduce a food retail focussed use. This would be aimed at attracting high customer numbers associated with a wide product range. A resultant combination of food retail and convenience goods

- arising from the side-by-side location of the proposed store and the existing b&m retail unit would be an attractive proposition for many shoppers. Given the nature of those offers, particularly accommodating weekly-shops and/or budget/bulk-buy merchandise, the majority of trips would inevitably rely on private motor vehicle to transport heavy or high-volume purchases.
6. Many visits to the site might be trips that would coincide with those made to the existing convenience goods retailer or replace those associated with the existing uses. However, as a different offer with broader appeal and one substantially more likely to attract a greater volume of passing trade, I have little doubt that the proposal would increase traffic generation to the site when weighed against the existing comparison goods warehouse and showroom sales which address a limited market sector. This would be through higher cumulative numbers of servicing and customer visits.
 7. Alongside increased turning at the junctions of Tebay Road with New Chester Road (A41) and the car park entrance, this would increase parking demand at the site. These matters are not contested by the appellant.
 8. The site access on to the estate road serving a number of industrial sites and a day centre provides good visibility for vehicles entering and exiting the proposed shared car parking and servicing areas. Given the number of units served by the road and its distance from the junction with the A41, I find manoeuvring at the entrance to the car park is unlikely to result in significant highway safety concerns.
 9. However, in the vicinity of the site, the southbound carriageway of the A41 is a 40mph dual carriageway with a run-off lane for vehicles turning into Tebay Road. On the northbound side, the carriageway includes 3 lanes providing a left turn lane for Neville Road which continues to the signalised junction with Bromborough Village Road some distance to the north. A central turning lane/refuge is present between the main carriageways. This facilitates traffic turning into and out of Tebay Road and Neville Road, or vehicles crossing the main road between them.
 10. At my site visit, albeit a snapshot in time, the A41 was heavily trafficked. According to the Council, a recent study to assess the A41 between the New Ferry by-pass and the M53 identified 'uncharacteristically high peak traffic volumes'. These were attributed, in part, to the route being a main link to the Queensway Tunnel. These high flows would potentially coincide with weekday peak periods for visitors to the site.
 11. I saw that the junction design is poor and poorly marked out across the central reservation. Only rudimentary lane markings defining the edge of the main carriageway were present. The absence of priority markings or clear road positioning requirements in the mid-lane causes them to be unclear for drivers using the central refuge. The arrangement has significant potential for movement conflicts.
 12. Notably, vehicles standing in the central refuge area waiting to enter Tebay Road would frustrate drivers turning out to travel north or on to Neville Road. They would largely prevent them from completing their manoeuvre and increase potential for queueing on Tebay Road. Although the appellant's assessment suggests queueing would be limited based on anticipated volumes of traffic, during busy periods when conflicts are increasingly likely, waiting at the

- junction would increase. The attendant propensity for assertive or hurried manoeuvring is therefore also likely to increase.
13. To avoid conflicts with traffic waiting to turn into Tebay Road or right out of Neville Road, the alignment of the opposing junctions and span of the refuge provides an opportunity for emerging vehicles to enter the refuge on the 'down-flow' side of vehicles waiting within the reservation area. Given the limited width of the central lane, vehicles attempting to depart it would subsequently have significantly reduced visibility to oncoming traffic on the opposite side of the junction.
 14. This positioning would equally reduce the visibility of those attempting to turn into Tebay Road. In order to improve sighting from within that area, drivers would be required to encroach towards, or on to the nearest lane of the main carriageway. This could impede the main road flows or result in heavy braking and/or responsive lane shifting for traffic travelling along the A41 with attendant increases in the risk of collisions.
 15. The associated risks would be heightened by the multiple lane arrangement and likelihood of traffic in the central lanes travelling faster than the outer lanes. Hesitant drivers or those unable to complete manoeuvres would potentially cause following drivers to wait within or overhang the main carriageway. Even accounting for intervals provided by the signalised intersections either side of the junction, the potential for vehicle conflicts and obscuring of sightlines would be significant.
 16. In support of the proposal the appellant has referred me to the 5-year accident record for the locality prior to 2020. This shows a limited number of incidents. However, it reflects a position prior to the introduction of the proposed use and does not account for increased use of the junction or drivers frustrated by prolonged waiting. It is therefore of limited weight in the consideration of the appeal.
 17. In the absence of designed junction improvements to demonstrate that a workable scheme could remove the elevated risks associated with increased use of the junction, I find that this is a matter which cannot be reserved and secured by planning condition. The imposition of a planning condition requiring junction improvement may not be cost effective or achievable otherwise. It is therefore unlikely to pass the test of reasonableness and could nullify any benefit of a permission it might be attached to.
 18. There would be an increase in parking demand at the site arising from the change away from trade sales – currently concentrated to the rear of the unit, and comparison goods reliant on the frontage car park.
 19. Whilst I am not directed to any specified parking standards, a parking assessment for the site concludes that the existing area would accommodate the maximum level of anticipated need arising from the proposed and existing retail units. However, there are nearby community facilities, including Leverhulme playing fields and a school, which, for convenience and safety, may add to the demand on parking within the site. Without parking restrictions, this could result in capacity being reached or exceeded at certain times.
 20. However, even if it were the case that capacity was reached, as opposed to parking outside of the site, I consider that patrons waiting to park would

generally remain within the confines of the car park until a space became free. This is due to the containment of the parking area, the restrictions on the Tebay Road carriageway, the likely high turnover of vehicles attending the site and the necessity for easy loading of goods. Accordingly, I find the provision for the existing and proposed uses would provide sufficient parking and avoid out-spill that could adversely impact highway safety.

21. Whilst I have found in favour of the appellant in relation to parking provision, this does not outweigh the significant harm to highway safety arising from the effects of increased use of the main road junction. I find the proposal would conflict with the National Planning Policy Framework as it seeks safe and suitable access to sites and the avoidance of unacceptable impacts on highway safety.

Locations for retail

22. Retail is defined as a main town centre use in the Framework. Proposals for out-of-centre locations are subject to a sequential test for developments above a locally defined size or above the threshold of 2,500m² gross floorspace required by the Framework. Despite the absence of a more stringent local standard, the appellant provided a sequential test in support of the proposed unit below the nationally specified threshold.
23. There is no dispute between the main parties that the sequential test submitted by the appellant demonstrates that the proposal could not be accommodated within the town centre or on an edge of centre site. Furthermore, the siting would be reasonably well connected to the existing centre by Bromborough Village Road and via local public transport routes. It would be at a similar distance from the town centre as the Croft Retail and Leisure Park.
24. Additionally, an impact test submitted by the appellant indicates that the scale and nature of the proposal would not cause harm to the retail offer in the town centre. This is not disputed by the Council. However, the Planning Practice Guidance (PPG) states that 'compliance with the sequential and impact tests does not guarantee that permission will be granted – all material considerations will need to be considered in reaching a decision'¹.
25. The site lies within a primarily industrial area. In such areas, saved Policy EM8 of the Wirral Unitary Development Plan [2000] (the UDP) promotes B-Class uses (as defined by the Use Class Order² at the time of the local plan's adoption). Whilst the policy does not explicitly exclude other uses taking place within those areas, on fair reading and in the context of the supporting text, the aim is clearly intended to retain allocated employment sites for employment purposes.
26. A review of the area identified it as a key location for industrial uses in the Wirral Employment Land and Premises Study 2017. Emerging Policy WS4.2 of the Wirral Local Plan Submission Draft proposes to pursue a similar level of protection to the UDP. As an identified main town centre use, the proposed retail development clearly falls outside the scope of the uses preferred in saved Policy EM8 and must be considered on its own merits.

¹ Paragraph: 011 Reference ID: 2b-011-20190722

² The Town and Country Planning (Use Classes) Order 1987

27. The site forms part of a bespoke development which was initially granted planning permission in 2006 for mixed use as a trade warehouse and retail units. This was some time after the adoption of Policy EM8. Although it contained an element of warehousing and a restriction was imposed on the total retail floorspace, the larger part of that development was approved for retail purposes. The existing site does not therefore fit neatly into the policy promoted land uses.
28. The introduction of the proposed use would supplant a limited element of warehouse storage including trade sales. As an active site which has not been tested in the market, there is little definitive evidence to demonstrate it could not be used for that purpose going forward.
29. However, whilst described as separate industrial units by the Council, Units 1 and 2 are physically and functionally linked. They are operated by the same company and, according to the appellant, serviced by single utility connections. Alongside the b&m unit, the buildings have a high degree of consolidation with a consistent exterior. Across the main frontage, the appearance as retail units is accentuated by the large display windows, feature public entrances and prominent fascia signage. In conjunction with the prominent open position presenting to a main road frontage, complete with totem signage and a publicly accessible floodlit parking area, the site has numerous features that distinguish it from the nearby industrial units.
30. In support of the scheme, the appellant has provided costings associated with providing separate utility connections, internal isolation between the units and rearrangement of access and servicing. These demonstrate that those requirements would reduce its attractiveness in comparison to standard units which the appellant demonstrates to be available nearby.
31. Whilst this may not be preventative to ongoing employment uses, the lack of ability to directly service the front site would be a significant constraint. In addition to being largely impractical, the appellant has demonstrated that the conversion costs and requirement to provide an internal route from the service area to the existing retail unit would raise the rental value beyond market values for B-uses in the locality. This would make it an unattractive proposition in the market.
32. Although there is no dispute between the main parties that a demand for commercial units exists in the region, as a single combined unit, I find its bespoke arrangement would impose some limit to the range of users and its attractiveness to potential tenants. According to the appellant's study, those established 'trade counter' businesses that might be attracted by the combined unit already have a presence in the locality. This is not contested by the Council.
33. Taken with the existing established retail uses on and adjacent to the site, the shared parking facilities, service area and absence of dedicated contained yard space, I find that the case for reintroducing alternative B-class uses is not without significant limitations. In an area that presents as retail, the potential incompatibility with the draw of public users and servicing arrangement of the adjacent units weighs heavily in favour of the development. The securing of 12 full-time equivalent jobs would also offset losses from the existing use.

34. Taking all of the above together, I find any harm arising from the loss of the trade counter unit would be limited given the availability of more apt sites. In the context of the wider employment area and the site's planning history, the site circumstances are unique and the Council's concerns in respect of establishing a precedent for other changes away from the B-Class uses are therefore unfounded. Precedent is rarely an argument that should carry great weight in planning decisions, which should be made on their own merits in the context of the development plan and other material considerations.
35. For the above reasons, whilst I recognise that there would be a minor conflict with Policy EM8 as it seeks to maintain the supply of land for employment uses, I find the loss of part of a mixed-use site predominantly designed and laid out for direct retail purposes would not result in demonstrable harm to the supply of employment premises in the locality.

Other Matters

36. I acknowledge the frustration expressed by the appellant with regard to the degree of engagement by the Council in relation to the application. However, this is not a matter for the appeal.

Conclusion

37. The proposal would result in significant harm to highway safety arising from increased draw to the site and a junction required to access it. The harm therein is not outweighed by my findings in relation to parking or locations for retail. It would conflict with the development plan and Framework 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 be allowed.

R Hitchcock

INSPECTOR