
Appeal Decision

Site visit made on 8 August 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022

Appeal Ref: APP/D1780/W/22/3297240

1 Redcar Street, Southampton SO15 5LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Sainsbury's Supermarkets Limited against the decision of Southampton City Council.
 - The application Ref 21/01291/FUL, dated 25 August 2021, was refused by notice dated 20 October 2021.
 - The application sought planning permission for construction of retail supermarket (A1) with restaurant, refurbished and extended library, housing office and shop units with associated parking and access works without complying with a condition attached to planning permission Ref 12/01299/FUL, dated 17 July 2013.
 - The condition in dispute is No 15 which states that: The toilets in the supermarket and shown on the approved plans, under decision reference 02/01410/FUL, shall be open and available for public use during those hours that the supermarket is open for business unless otherwise agreed in writing by the Local Planning Authority.
 - The reason given for the condition is: To ensure that the development reprovides suitable amenities for the benefit of users of the shopping centre.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading is taken from the original planning permission granted for the development in 2003¹. Since the grant of that permission, a number of applications made under section 73 of the Town and Country Planning Act 1990 have been made which have altered certain conditions and condition numbers. The most recent permission is reference 12/01299/FUL. It is condition 15 from this permission that the appellant is seeking to remove. Although the condition number has changed, the requirement is the same as that on the original permission.
3. A completed Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 was submitted as part of the appeal. The UU seeks to apply the requirements of the previous Section 106 legal agreements to the new permission in the event of a successful appeal.

¹ Reference 02/01410/FUL

Background and Main Issue

4. Public toilets had to be demolished to enable the shopping centre development to proceed. A requirement was placed on the original permission to provide a replacement facility. The replacement facility was provided within the Sainsbury's store. The condition requiring their provision has been retained through the various section 73 applications that have been approved. However, the appellant states that there has been a significant increase in anti-social behaviour associated with the use of the toilet facilities. While the store's management has sought to manage this, it has now reached a level whereby, in the absence of substantial assistance from law-enforcement, it is not possible to continue to comply with the condition. The appellant is therefore seeking to remove the condition so that the toilets can be closed.
5. Taking the above background into account, the main issue is the effect that removing the condition would have on the provision of community facilities and the vitality of Shirley Town Centre.

Reasons

6. The Sainsbury's store fronts the precinct and forms part of the primary retail frontage of Shirley Town Centre. The public toilets are located close to the store entrance and comprise separate male and female toilets, a disabled toilet and baby changing facilities accessed off a corridor near to where the instore restaurant used to be. Entry to the various facilities is controlled through a keypad system, with the code obtainable at the customer services kiosk.
7. Shirley Town Centre is the second largest in the City Council area after the city centre. Policy CS3 of the Core Strategy² supports the role of the town and district centres in providing shops and local services in safe, accessible locations. The policy also states that proposals that result in the loss of a community facility throughout the city will not be supported if it is viable for the commercial, public or community sector to operate it and if there is no similar or replacement facility in the same neighbourhood.
8. I appreciate that the National Planning Policy Framework (the Framework) Glossary does not include public toilets within the definition of main town centre uses. Public toilets are not specifically listed in Policy CS3 of the Core Strategy as a community facility, although that list is not exhaustive. In addition, for a centre at this level in the town centre hierarchy, members of the public would have a reasonable expectation of public toilets being available. Having regard to the comments made by the interested parties, publicly available toilets have a community value and are a consideration for some people when visiting Shirley Town Centre. Furthermore, the availability of public toilets is particularly important for certain sections of the community including older people, people with particular disabilities or medical conditions, women and families with young children. A lack of these facilities could result in certain groups feeling anxious about going out, which in turn can lead to health and wellbeing issues. A public toilet within the Town Centre could therefore reasonably be considered as an important community facility.
9. The appellant is not proposing a replacement facility but has identified a number of existing facilities within Shirley Town Centre. The supporting text for

² Local Development Framework Core Strategy Development Plan Document Amended Version incorporating the Core Strategy Partial Review March 2015

Policy CS3 states that proposals that involve the loss of well supported, accessible community facilities should make provision for a replacement ideally within 800 metres (10 minute walk). While this text relates to local centres, the appellant considers that it gives an indication of reasonable distance people would be expected to walk to find an alternative option for a public toilet.

10. The Lidl's supermarket, which fronts onto Shirley High Street (the High Street) and is around seven minutes walk from Sainsbury's, has a customer toilet. Lidl's opening hours are similar to Sainsbury's. However, the submitted information highlights that there are no planning controls that can require its provision. The appellant's information identifies that there is a 'Changing Places' toilet at the Freemantle and Shirley Community Centre. This is located just off the High Street, around 10 to 15 minutes walk from Sainsbury's. This facility does not therefore have the same locational relationship with the Town Centre services and facilities as Sainsbury's. There are several cafes, restaurants and bars in the Town Centre within around a 10 minute walk, but the toilets associated with these premises could not be considered to be publicly available in the way that those in Sainsbury's are.
11. The removal of the disputed condition would therefore result in the loss of a community facility with no similar or replacement in place.
12. At the time of my site visit, which I appreciate is a snapshot in time, those areas of the facilities that I was able to access appeared to be in a clean and working order and were being used by members of the public. Nevertheless, the appellant has highlighted that there has been a significant increase in anti-social behaviour associated with the use of the facilities and the difficulties that this has caused for staff including the fear of abusive behaviour. The Council's officer report also acknowledges that the store is challenged by anti-social behaviour associated with the toilet facilities.
13. I note that the appellant has liaised with the police over an 18 month period. In its consultation response³, the Hampshire Constabulary has identified only one recorded incident during the period September 2020 to September 2021. However, I acknowledge the appellant's view that seeking police statements for each act of vandalism would not be a good use of police time. Moreover, the Hampshire Constabulary consultation response states that there is no reason why incidents would necessarily be reported. A lack of recorded incidents is not therefore necessarily an indication of a lack of anti-social behaviour.
14. The appellant has submitted a log of incidents at the toilets. However, it is difficult to conclude just how many of these incidents stemmed from anti-social behaviour. For example, several appear to relate to issues with staff toilets rather than the publicly available ones. Others seem to be routine maintenance issues that would occur irrespective of any anti-social behaviour. A number appear to be relatively minor repairs that were required, although I appreciate that cumulatively, these could add up to a more significant issue in terms of staff time and cost.
15. The safety and security of staff and customers are important considerations, as demonstrated by the objectives of Policy SDP10 of the Local Plan⁴ and the Framework regarding healthy and safe communities. However, based on the

³ Letter from Hampshire Constabulary to Southampton City Council dated 17 September 2021

⁴ City of Southampton Local Plan Review – Adopted Version 2nd Revision 2015

submitted evidence, I am not persuaded that retention of the toilets would no longer be viable. Nor am I persuaded from the submitted evidence that the anti-social behaviour that may be associated with the use of the toilet facilities and the perceived and/or actual safety and security concerns associated with their management and use would outweigh the community benefits of retaining them.

16. During my site visit on a weekday afternoon, I observed a range of retail and other uses such as cafes, restaurants and financial services within the precinct and on the High Street, including a mix of local and national outlets. A number of the nearby car parks offer time limited free parking. There was a reasonable footfall within the precinct, on the High Street and within the various premises. I saw a relatively low level of vacancies.
17. There will therefore be many reasons for people coming to Shirley Town Centre, and the availability of public toilets will not be the sole consideration, or an important one, for everyone. However, as noted above, the availability of toilets will be an important factor for wide sections of the community as well as visitors. A lack of public toilets would likely dissuade certain groups from coming to the Town Centre or would reduce the length of time that they spend there. There would therefore be the potential for some undermining of the vitality of Shirley Town Centre if this facility was not retained.
18. The appellant has highlighted paragraph 90 of the Framework and considers that it is only where there is likely to be a significant adverse impact on vitality should planning permission be refused. However, this paragraph relates to applications for retail and leisure development outside town centres not in accordance with an up-to-date plan, which is not the case here.
19. For the reasons given, I conclude that removing the disputed condition would result in the loss of a community facility without any suitable replacement or alternative provision and would undermine the vitality of Shirley Town Centre. The proposal would therefore conflict with Policy CS3 of the Core Strategy, the most relevant aims of which have been summarised above. It would also conflict with Policy SDP1(i) of the Local Plan which only allows for development that does not unacceptably affect the health, safety and amenity of the city and its citizens. There would also be conflict with the aims of Policy REI5 of the Local Plan and paragraph 86 of the Framework regarding ensuring the vitality of centres.

Other Matters

20. From the evidence before me, it appears that the mixed use development that Sainsbury's was the anchor store for represented the long term planning and investment for Shirley Town Centre. Given that this development included the re-provision of the public toilets, it is reasonable to conclude that this represented a long term solution to such provision. I have no evidence before me to suggest that the re-provision of the public toilets in their current location was a temporary arrangement.
21. In the event of Sainsbury's closing, the requirement set out in the disputed condition would also apply to another supermarket using the premises.

Conclusion

22. The proposed development would conflict with the development plan taken as a whole as well as the Framework. There are no material considerations worthy of sufficient weight that would indicate a decision otherwise than in accordance with it. The appeal should therefore be dismissed.

F Wilkinson

INSPECTOR