



Appeal Decision

Site visit made on 22 November 2022

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2023

Appeal Ref: APP/H1033/W/22/3295495

The Fickle Mermaid, Foresters Way, Chapel-En-Le-Frith SK23 0RB

- 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 EG Group Ltd against the decision of High Peak Borough Council.
 - The application Ref HPK/2021/0173, dated 9 March 2021, was refused by notice dated 16 February 2022.
 - The development proposed is described as "Demolition of existing structures and construction of roadside facility comprising a petrol filling station, associated convenience store and 1 no. drive thru unit (Class E)".
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing structures and construction of roadside facility comprising a petrol filling station, associated convenience store and 1 no. drive thru unit (Class E) at The Fickle Mermaid, Foresters Way, Chapel-En-Le-Frith SK23 0RB in accordance with the terms of the application, Ref HPK/2021/0173, dated 9 March 2021, subject to the attached schedule of conditions.

Main Issues

2. The main issues are the effect of the proposal on highway safety in terms of parking; the effect of the proposal on the environment; whether the proposal would result in an unnecessary loss of a community facility; and the effect of the proposal on the character and appearance of the surrounding area.

Reasons

Highway safety

3. The proposed development would provide 39 parking spaces in total which excludes the jet wash bays and order waiting bay. There is a requirement for the proposed development to have 41 parking spaces. Therefore, the proposal does not accord with the Council's parking standards guidance detailed in Appendix 1 of the High Peak Local Plan Adopted 2016 (HPLP).
4. A parking accumulation exercise based on TRICS survey data has been provided which details parking demand during the week and at a weekend for the uses proposed at the site. This exercise details that the maximum demand for parking would be for 17 vehicles across the site. It is also noted that there may be elements of linked trips with users of the existing adjacent food store using the parking associated with the food store and travelling by foot to the proposed development.
5. The Council's Highways Officers have not raised any objection to the proposed parking provision. Whilst the proposed parking would not meet the standards in

Appendix 1 of the HPLP by two spaces, the standards are guidance and proposals should be considered in the context of its need for parking and its impact on the local road network.

6. From the evidence provided, I am satisfied that the proposal would provide sufficient parking provision. The proposal would not result in an unlikely increase in on street parking to the detriment of the free and safe flow of traffic.
7. The proposal would not have a harmful effect on highway safety with regards to parking. The proposal would not be contrary to Policies EQ6 and CF6 of the HPLP which seeks development to incorporate well integrated car parking based on an assessment of the parking needs of the development and the impact on the surrounding road network.
8. Concerns have also been raised with regards to highway capacity and road safety although these matters have not been detailed in the Council's reasons for refusal on the decision notice. These concerns include details that trip rates would be higher than detailed in the submitted Transport Statement (TS), potential land-use of the site, the inability for the right-turn ghost lane to cope with traffic at peak times and vehicular queue lengths during peak traffic times. It has also been brought to my attention that there have been fatalities from accidents on the A6 roundabout near the appeal site.
9. There is no substantial evidence before me to suggest that the data provided in the TS is inaccurate and that the surrounding highway junctions would not be able to cope with the traffic associated with the proposed development. It is acknowledged that depending on the end users of the proposed buildings this may affect the number of trips to the site, however, I remain satisfied that the amount of parking provision would be sufficient. There has been minimal information provided with regards to the accidents that have led to fatalities at the A6 roundabout. From the evidence submitted, I am satisfied that the proposal would not have an adverse effect on the surrounding highway network.

Environment

10. The existing building appears to be a relatively new building which the Council contend would require permission to be demolished. There is a concern that the removal of the existing building along with the construction of the proposed development would not respond positively to the challenge of climate change, given the carbon emissions likely to be associated with the development construction.
11. The appellant has indicated that to reduce the effect on the environment, the proposed scheme would include the extensive re-use of existing materials as well as introducing refuelling and EV charging facilities. The Council have also suggested conditions which would ensure sustainable drainage and the requirement for a Landscape and Biodiversity Enhancement Scheme. These matters would further contribute positively to the environment at the appeal site.
12. Given the scale and proposed uses of the scheme, as well as the matters described above, the proposal would not have a significant adverse effect in terms of climate change and carbon emissions.

13. The proposed development would not be harmful to the surrounding environment. The proposal would not be contrary to Policies S1, EQ1 and EQ6 of the HPLP which seeks development to make a positive contribution towards sustainability of communities and protection of the environment and mitigate the process of climate change.

Community facility

14. The proposed development would introduce services and facilities that can be used by the local community. The proposals would be accessible being well related and connected to the existing settlement.
15. Criteria 3 of Policy CF5 of the HPLP details that proposals involving the loss of community facilities should be resisted unless it can be demonstrated that the existing use is no longer financially or commercially viable, or an alternative facility of the same type is available.
16. The existing use of the building at the appeal site is a public house. A number of other public houses have been identified being in accessible locations within the nearby town centre. Whilst these other public houses may not be identical in terms of site layout and format, they nevertheless are alternative facilities of the same type as the building which is proposed to be removed. The proposal would therefore accord with criteria 3 of Policy CF5.
17. Details have been provided indicating that the existing use is unviable and the Council consider insufficient evidence has been provided on this matter. Nevertheless, I remain satisfied that given it has been demonstrated that alternative facilities of the same type are available, that the proposal accords with criteria 3 of Policy CF5.
18. The proposal would not result in an unnecessary loss of a community facility. The proposal would accord with Policy CF5 of the HPLP which seeks to maintain and improve the provision of local community services and facilities.

Character and appearance

19. The area surrounding the appeal site is characterised predominantly by commercial buildings with an Aldi food store immediately to the west and other commercial buildings to the south. The built form in the area is mixed with buildings having different styles and materials along with car parking being notable features. Development in the area is interspersed with trees and landscaping. The A6 highway runs along the north boundary of the site. It is this commercial nature of various style buildings which contributes to the character of the area.
20. The proposed development which includes the petrol filling station, convenience store and drive thru unit would be plain and utilitarian in appearance, being of typical design and scale for these type of buildings which can be seen in many areas, particularly existing commercial areas near main highways. The proposals are considered to be in a gateway position, and would be in a prominent location and visible from surrounding viewpoints however, they would not appear out of keeping with the commercial uses and appearance of existing buildings in the area.
21. The existing building is significantly different in character and appearance to the proposed development. However, given the context of the buildings and

uses which surround the appeal site, the proposed development would not have a detrimental effect on the surrounding environment or local vernacular. Due to the proposals, design, scale, position and materials, they would not be intrusive buildings that would compromise the surrounding built setting.

22. Accordingly, the proposal would not have a harmful effect on the character and appearance of the surrounding area. The proposal would not be contrary to Policy EQ6 of the HPLP, the High Peak Design Guide 2018 and the National Planning Policy Framework (the Framework) which seeks development to be well designed and of a high quality.

Other Matters

23. I have had regard to representations made by local residents and Chapel-en-le-Firth Parish Council which include comments relating to noise, litter, public consultation, town infrastructure, need, odour, light pollution and wildlife. I note that the Council have not raised any fundamental concerns with regards to these matters. Due to the scale and use of the proposals, I am satisfied that the scheme would not have an adverse effect on the surrounding area including the matters raised by third parties. Evidence has been provided indicating that the appeal has been publicised and the Council's Officer report details significant number of public responses to the planning application. The Parish Council have suggested that a penalty clause relating to littering should be imposed however, such a condition would not be reasonable or enforceable.

Conditions

24. The conditions imposed are those that were suggested by the Council and agreed by the appellant. In the interests of precision and clarity I have undertaken some minor editing and rationalisation where necessary.
25. Conditions relating to timeliness and the identification of plans are necessary in the interests of proper planning and to provide certainty. To ensure the development does not compromise the character and appearance of the surrounding area, conditions are necessary in relation to materials, means of enclosure, soft and hard landscaping, and bin storage. In the interests of highway safety conditions are imposed in relation to site layout, site development management and wheel-washing facilities. To prevent undue risk to the local environment it is necessary to attach conditions relating to contamination, operation times, drainage and biodiversity matters. In the interests of encouraging sustainable modes of travel, a condition is imposed relating to vehicle electric charging points.

Conclusion

26. The proposal would not conflict with the development plan and there are no other considerations, including the provisions of the Framework, which outweigh this finding.
27. For the reasons given above, I conclude that the appeal should be allowed.

Chris Baxter

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 the following approved plans: 20111CF-CA-S1-00-DR-1-110_01-S4-B Site location plan; 20111CF-CA-S1-00-DR-A-210_02-S4-B Proposed site plan; 20111CF-CA-B4-ZZ-DR-A-310_01-S4-E-PRFFTG2 Plans and Elevations; 20111CF-CA-B5-ZZ-DR-A-310_02-S4-C-Drive Thru Coffee Plan and Elevations; 20111CF-CAS1-ZZ-DR-A-310_03-S4-A-PFS Canopy Plans and Elevations; Proposed visuals Rev C; 4629 Rev B Landscape Layout; DTP-3704620-ATR002 Tracking Plan.
3. Before the development hereby approved is commenced, samples or full details of all external facing materials shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. Before the development hereby approved is commenced details of the design, external appearance and decorative finish of all railings, fences, gates, walls, bollards and other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being brought into use.
5. Before the development hereby approved is commenced a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority, the details of which shall include:
 - (a) indications of all existing trees and hedgerows on the land;
 - (b) details of any to be retained, together with measures for their protection in the course of development;
 - (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
 - (d) finished levels and contours;
 - (e) means of enclosure;
 - (f) car park layouts;
 - (g) other vehicle and pedestrian access and circulation areas;
 - (h) hard surfacing materials;
 - (i) minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);
 - (j) proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc);
 - (k) retained historic landscape features and proposed restoration, where relevant.
6. Before the development hereby approved is brought into use the parking and manoeuvring of visitors, staff, customers, service and delivery vehicles shall be laid out and surfaced in accordance with the application drawing

DTP/37C4620/ATR001/A and subsequently maintained throughout the life of the development free from any impediment to its designated use.

7. Before the development hereby approved is commenced (excluding demolition/ site clearance), details of storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles shall be submitted to and approved in writing by the Local Planning Authority. Development shall be laid out and constructed in accordance with the approved details and kept free from any impediment to its designated use.
8. Before the development hereby approved is commenced details of wheel-washing facilities shall be submitted to and approved in writing with the Local Planning Authority. The wheel-washing facilities shall be maintained throughout the construction period of the development.
9. Before the development hereby approved is commenced an assessment of the risks posed by any contamination shall be submitted to and approved in writing by the Local Planning Authority. This assessment shall be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - a survey of the extent, scale and nature of contamination;
 - the potential risks to: human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
10. No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out, and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority, before the development is occupied.

11. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.
12. If piling is necessary a written method statement shall be submitted to and approved in writing by the Local Planning Authority. This method statement should be in line with Environment Agency guidance (Environment Agency (2001), Piling and Penetrative Ground Improvements on Land Affected by Land Contamination NC/99/73). The effects of noise generation (hours of operation) should also be considered, and should include noise mitigation measures consistent with best practical means. No piling shall take place until the method statement has been approved.
13. Before the development hereby approved is commenced the developer shall either submit evidence that the existing building was built post 2000 or submit an intrusive pre-demolition asbestos survey in accordance with HSG264 and a mitigation plan to reduce risks to potential occupiers and the wider public. The report shall be submitted to and approved in writing by the Local Planning Authority. (NB it should be noted a management survey report is unlikely to be acceptable as this does not meet the requirements of the guidance). The approved mitigation scheme must be carried out in accordance with its terms prior to the commencement of development.
14. All noise-generating activities shall be restricted between the following times of operations:
 - 07:30 - 18:00 hours (Monday to Friday);
 - 08:30 - 14:00 hours (Saturday)
 - No working is permitted on Sundays or Bank Holidays.

In this condition, a noise-generating activity is defined as any activity (for instance, but not restricted to, building construction/demolition operations, refurbishing and landscaping) which generates noise that is audible at the site boundary.

15. Before the development hereby approved is commenced a detailed design and associated management and maintenance plan of the surface water drainage for the site shall be submitted to and approved in writing. The details shall include the following:
 - (a) Fuel Storage Feasibility Assessment, issue 1 dated 15th July 2021, Ref: UK21.5465, Flood Risk Assessment dated October 2020, issue V1.0 Ref: NS_0124_42, Drainage Report dated 13th October 2020, Ref: 2020-051 and email from the applicant (Mr Matthew Gray) dated 19th October 2021 including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team.

- (b) And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015).

16. Before the development hereby approved is commenced details indicating how additional surface water run-off from the site will be avoided during the construction phase shall be submitted to and approved in writing by the Local Planning Authority. The approved system shall be operating to the satisfaction of the Local Planning Authority, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.
17. Following approval of the details required for condition 15, and prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer shall be submitted to and approved in writing by the Local Planning Authority. This report shall demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
18. Foul and surface water shall be drained on separate systems.
19. Before the development hereby approved is commenced a scheme to install the underground tank shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the full structural details of the installation, including details of: excavation, vaulted tertiary containment structure, the tanks, tank surround, associated pipework and monitoring system. The development shall be fully implemented and subsequently maintained in accordance with the approved scheme.
20. Before the development hereby approved is occupied a verification report demonstrating completion of the installation of the agreed mitigation measures set out in the installation scheme required under condition 17 shall be submitted to and approved in writing by the Local Planning Authority. The report shall include detailed as built engineering drawings and confirmation that the tertiary containment is intact and suitable to prevent and release of hazardous substances to groundwater. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The long-term monitoring and maintenance plan shall be implemented as approved.
21. Before the development hereby approved is commenced a scheme for the disposal of foul and surface water and installation of oil and petrol separators shall be submitted to and approved in writing by the Local Planning Authority. Development shall be implemented in accordance with the approved scheme.
22. No removal of hedgerows, trees, shrubs or brambles shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period, and details of measures to protect the nesting bird

interest on the site, have first been submitted to and approved in writing by the local planning authority and then implemented as approved.

23. Before the development hereby approved is commenced, a Landscape and Biodiversity Enhancement Scheme (LBES) shall be submitted to and approved in writing by the Local Planning Authority. The LBEMS shall include the following:-

- (a) Details of native and non-native tree and shrub planting including location, species and numbers, and provision of planting pits
- (b) Details of pollinator friendly grassland and flowerbeds including location, planting methods and aftercare provision.
- (c) Appropriate management methods and practices to maintain landscaping
- (d) Details of how the landscaping features will be maintained
- (e) Requirement for a statement of compliance upon completion of planting and enhancement works.

The development shall be implemented in accordance with the approved details.

24. Before the development hereby approved is commenced a schedule of landscape maintenance for a minimum period of ten years shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

25. Before the development hereby approved is commenced a scheme for electric vehicle charging points to be incorporated into the development shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and available to customers upon first opening of the approved development to the public.

26. Before the development hereby approved is commenced a scheme providing details of bin storage on the site shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to the first opening of the development to the public.