



Appeal Decision

Site visit made on 24 January 2023

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2023

Appeal Ref: APP/P4605/W/22/3298614

Mrh Waterlinks Service Station, Watery Lane Middleway, Birmingham B9 4HF

- 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 Motor Fuel Group Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/07793/PA, dated 7 September 2021, was refused by notice dated 11 November 2021.
 - The application sought planning permission for installation of vehicle charging points and associated electrical infrastructure including new sub-station enclosure without complying with a condition attached to planning permission Ref 2021/00556/PA, dated 26 May 2021.
 - The condition in dispute is No 4 which states that: *4. The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing numbers '13664-P06-543', '13664-P07-543', '13664-P02-543 Rev B', '13664-P04-543 Rev B' ('the approved plans').*
 - The reason given for the condition is: *4. In order to define the permission in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.*
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Decision

1. The appeal is allowed, and planning permission is granted for the installation of vehicle charging points and associated electrical infrastructure including new sub-station enclosure at Mrh Waterlinks Service Station, Watery Lane Middleway, Birmingham B9 4HF in accordance with the application Ref 2021/07793/PA made on 7 September 2021 without complying with condition No 4 set out in planning permission Ref 2021/00556/PA granted on 26 May 2021 by Birmingham City Council, but otherwise subject to the conditions listed in the schedule at the end of this decision.

Preliminary Matters

2. Since the Council's decision on the planning application, the Development Management in Birmingham Development Plan Document (2021) (DPD) and Birmingham Design Guide SPD (2022) (SPD) have been adopted, superseding the Birmingham Unitary Development Plan (2005) and Supplementary Planning Guidance 'Places for All'. For the purposes of decision making the DPD and SPD now form part of the development plan. The relevant policies and guidance of the DPD and SPD were referred to in the Council's appeal documents, and the appellant has had a chance to comment on these. Consequently, no parties

have been prejudiced by me having regard to those details in reaching my decision.

3. I have dealt with another appeal (Ref: APP/P4605/W/22/3297527) ('the other appeal') on this site. That appeal is the subject of a separate decision.
4. The application subject to this appeal seeks to revise the layout design of a development approved in 2021¹ (the 2021 permission). This type of application is possible as a condition was imposed on the original permission specifying the approved plans. The appeal seeks variation of the condition and replacement with conditions specifying the plans that reflect the amended layout design.

Background and Main Issue

5. The current proposal is to vary condition 4 of the 2021 permission which related to the compliance with the approved drawings. The proposal includes changes to the number and location of EV charging points and the relocation of plant buildings. The Council refused the application² on account of the visual harm caused to the locality by the relocated plant buildings close to the site's boundary and the removal of boundary landscaping. However, no concerns were raised in respect of the reconfigured EV charging point layout.
6. The application form indicates that works have not started. However, during my site visit I observed that most of the proposed layout changes had been undertaken. Images presented in the Council's appeal statement also show that to be the case. The location and appearance of the works carried out appeared to align with the submitted drawings. Therefore, I have determined the appeal on the basis that the appellant is seeking permission for what is now in place, as well as the other works proposed but not started.
7. With that background the main issue in this appeal is the effect of the development on the character and appearance of the area.

Reasons

8. The appeal site, a large service station, consists of a petrol forecourt area with canopies, service building, internal circulation routes and associated parking. The site has a frontage onto the busy Watery Lane Middleway, and bounds St Andrew's Road and Bolton Street to the and north east and south east respectively. It is visually prominent given its proximity to those roads, while also seen in context with many large industrial and retail warehouse buildings fronting the highway. There is a wide, attractively landscaped central reservation opposite the site frontage that divides the Water Lane Middleway. This area softens the otherwise high density, commercial character of the area.
9. The Council attributes value to the appeal site's open character which is enhanced by the views obtained over the low boundary enclosures and planting that surround parts of its perimeter. The sales building and fuel pump canopies occupy a small proportion of the site's area, yet those structures are sizeable. The largely undeveloped intervening areas, comprise hardstandings that have no particular visual attributes, while a sizeable portion of those areas are used for vehicle parking. Furthermore, those spaces are subject to a high level of activity from vehicles circulating around the forecourt, vehicles accessing and

¹ Planning permission Ref 2021/00556/PA

² Planning permission Ref 2021/07793/PA

egressing onto surrounding roads and customers walking to and from the service building. The effect of that activity upon those areas, along with the presence of buildings and other infrastructure diminishes, in my view, any perceived value the site's open character makes to the locality. Accordingly, I attribute only minor weight to the contribution the site's open character makes to the area.

10. The 2021 permission approved EV charging points/vehicle bays and associated electrical plant equipment at the site's northern corner where Waterway Middleway meets St Andrews Road. Aerial images of the appeal site show that the development area previously comprised dense shrubbery. The configuration and close proximity, of the EV equipment and electrical plant approved by the 2021 permission, to the northern boundary will have displaced a significant portion of the former shrub area, even following planting that was conditioned as part of that permission. The perceived visual enhancement of a landscaped buffer between the equipment/plant and the site's northern boundary will have been reduced by the scale and immediacy of those structures positioned just a few metres back from the boundary.
11. Against that background, it seems that the Council was satisfied, in granting permission, to allow an area of established boundary planting to be lost to allow for the service station's expansion towards the northern boundary. Accordingly, limited weight, in my view, is afforded to the visual benefits the Council associates with the landscaped boundary that would have been created under the 2021 permission.
12. The proposal, amongst other things, includes the re-positioning of a substation measuring 2.8m wide, 2.8m deep and 2.55m high; and a 'GPR LV' enclosure measuring 3.1m wide 2.8m deep and 2.3m high. They would be grouped close together along the northern boundary and enclosed by 2.4m high louvered fencing.
13. The substation/GPR LV and fencing's siting immediately adjacent to the northern boundary has removed the relatively shallow landscaped buffer that would have existed had the 2021 permission been built. Some new shrubs appear to have recently been planted around the side and rear of these structures. Once established the planting would soften and enhance the screening of the re-configured equipment. Moreover, the re-configured EV charging points/ bays have been set further back into the site meaning the new planting covers a wider area around the site's northern corner, compared to the landscaped area set aside in the 2021 permission.
14. It is not clear whether the planting area has been the subject of a formal scheme agreed by the Council, therefore a planning condition could be imposed to augment the landscaping in that area along with procedures that would address any future planting damage. This would also help soften the site's boundaries, the appearance and scale of the re-positioned structures and the interface with the adjacent highway.
15. Despite the proximity of the substation/ GPR LV to the road, I observed large warehouse buildings lining St. Andrew's Road a short distance to the east with no obvious set back from the public highway. Therefore, buildings being positioned close to the street is not uncommon in the area and in this respect the proposal would not look out of place or inconsistent with the immediate built pattern.

16. The substation/GPR LV and fencing fronts a very limited section of the appeal site's perimeter. They are not substantial in height or mass and views can be obtained over and around the structures through the site's many open gaps and permeable boundary features. In my view their siting does not diminish the overall visual perception that receptors would have of the service station.
17. I have considered the proposal's cumulative visual effect with the canopy structure proposed in the other appeal and given the combined scale of these schemes, their proximity and subservience to larger and taller structures within the service station and wider locality, along with the intensive activity at the site, there would be no unacceptable harm on the area's character.
18. For all these reasons, I conclude that the appeal development will be acceptable in terms of its impact upon the character and appearance of the area. It would accord with Policy PG3 of the Birmingham Development Plan, Policy DM2 of the DPD and the SPD which require amongst other things that development is appropriate for its location, respects the prevailing character and preserves features that make a positive contribution to the area. The proposal would also align with the guidance contained within the National Planning Policy Framework and the National Design Guide where they require schemes to be sympathetic to the local environment.
19. In concluding on the main issue, I have not referred to the policies and guidance in the Birmingham Unitary Development Plan (2005) and Supplementary Planning Guidance 'Places for All' as these have been superseded.

Other Matters

20. The Council has questioned whether the amended layout contributes to facilitating a low-carbon economy, as the site's EV charging infrastructure can operate without it. Notwithstanding this, I have found the scheme to be acceptable in respect of the main issue and therefore give the Council's argument limited weight.

Conditions

21. I have considered those conditions imposed on the 2021 permission and further conditions suggested to me, amending them where necessary in accordance with the Planning Practice Guidance (PPG). I have also sought the views of the main parties on conditions that require the agreement and implementation of further details relating to the appeal development.
22. The plans condition is necessary as the development has been undertaken and I have listed the plans in the Decision.
23. The landscaping, boundary treatment and noise limit conditions are imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the boundary, landscaping and noise limits before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met.

24. Since the development has commenced it is not necessary to impose a time limit condition.

Conclusion

25. For the reasons given above, and having considered all matters raised, I conclude that the appeal should succeed. I have granted a new planning permission without the disputed condition but substituting it with another and reinstating those undisputed conditions that are still subsisting and capable of taking effect

RE Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following drawings: Location Plan at scale 1:1250, drawing number: 13664-LP-543, REV. A, Block Plan at scale 1:500, drawing number: 13664-BP-543, REV. B, Proposed Site Layout at scale 1:200, drawing number: 13664-P11-543, Proposed Site Layout at scale 1:200, drawing number: 13664-P02-543, REV E, Substation Elevations at scale 1:50, REV. A, LV Enclosure Elevations at scale 1:50, drawing number: 13664 P07-543 REV. B and Proposed Site Elevations at scale 1:200, drawing number: 13664-P04-543 REV.D ('the approved plans').
2. Unless within 6 months of the date of this decision a scheme for boundary treatment of the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the use of the site as an EV charging station shall cease and all associated equipment removed until such time as a scheme is approved and implemented.

These details shall include plans showing the locations of existing, retained and proposed new boundary treatments (including any trip rail modification and substation enclosures) and scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the occupation of the site as an EV charging station shall cease and all associated equipment removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved boundary treatment specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3. Unless within 6 months of the date of this decision a scheme for hard and/or soft landscaping of the site is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the use of the site as an EV charging station shall cease and all associated equipment removed until such time as a scheme is approved and implemented.

These details shall include proposed finished levels or contours, means of enclosure, hard surfacing materials, minor artefacts and structures, proposed and existing functional services above and below ground, fully annotated planting plans to a scale of 1:100, showing, where used, locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs, and areas of grass. Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another, and the locations of any individual specimen shrubs. Other information shall include planting schedules, noting species, plant sizes and

proposed numbers / densities and details of the proposed planting implementation programme.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the occupation of the site as an EV charging station shall cease and all associated equipment removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved boundary treatment specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

4. The rating levels for cumulative noise from all plant and machinery shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing Laeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014) or any subsequent guidance or legislation amending, revoking and/or re-enacting BS4142 with or without modification.

*****End of Schedule*****