



Appeal Decision

Site visit made on 22 February 2023

by P. D. Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2023

Appeal Ref: APP/X15445/W/22/3305388

112 The Causeway, Heybridge, Maldon CM9 4LL.

- 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 Mr Hoy (JJ Windows & Doors Ltd) against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00173 dated 10 May 2022, was refused by notice dated 5 July 2022.
 - The development proposed is construction of covered outdoor seating area/structure and black shipping container/takeaway hut at front of site (retrospective).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal the subject of this application was originally submitted along with an application for a large amount of advertising at the site. With the agreement of the appellant the two elements were resubmitted as separate applications with a new description which I have used for the purposes of this decision.
3. Both applications were refused and both decisions have been appealed. Whilst the appeals deal with different proposals and are not formally linked, this decision should be read with the decision on the advertising (APP/X1545/Z/22/3309378) as the billboard attached to the container/shelter is part of the advertising.

Main Issues

4. The main issues in this case are whether the proposal would :
 - be an appropriate use in this designated employment site;
 - have a detrimental effect on the character and appearance of The Causeway and surrounding area;
 - have a detrimental effect on flood risk; and
 - have a detrimental effect on highway safety as a result of parking available for the use.

Reasons

5. The appeal site forms part of an area along The Causeway which is identified as a Designated Employment Area in Policy E1 of the *Maldon Local Plan* (MLP). The site is currently occupied by a business manufacturing and fitting UPVC windows and

doors and ancillary products. The site is in a prominent position close to the centre of Heybridge.

6. At the northern end of the site a small triangle of land bridges over a water course on which is sited a black shipping container and timber, open sided shelter with tables which is currently in use as a food takeaway. The appeal proposal is to regularise this use.
7. Public footpath No 45 runs from The Causeway between this triangular area and the main part of the site in an easterly direction along the watercourse.

The Use in this Location

8. Policy E1(I) identifies that within The Causeway - Maldon and Heybridge Designated Employment Area development should be for B1, B2 and B8 uses and sui generis uses of an employment nature unless it can be demonstrated that there is no reasonable prospect for the site to be used for these purposes. The policy goes on to state that complementary and supporting uses may be considered acceptable where they serve an essential ancillary function to the employment area and will not result in a material change of the area's class B character and function.
9. The new commercial Use Class E defines cafe and restaurant use as one which will predominantly involve consumption of food on the premises whereas takeaways will mainly involve the consumption of food off the premises and will be classed sui generis. The use being proposed in this case, although offering the possibility of consumption of food and drink in the shelter, appears to be designed more as a takeaway in character and, as with a takeaway, an element of the business offers food deliveries off site. Thus the business would appear to be operating more as a takeaway than a café and therefore sui generis.
10. That said, I am not satisfied that the sui generis use is directly of an employment nature as required in Policy E1. I accept there will be staff employed there but it is not a use contributing directly to employment generation in the area. It has been put to me that it is ancillary as a complementary and supporting use providing catering to the businesses of the area but it is not essential to the function of the employment area in that there would be no direct impact if the use were not there.
11. I accept that as the proposal uses a corner of the JJ Plastics site it would not result in a major loss of an employment site and in terms of its scale would not, of itself, be a material change in the area's Class B character and function. However, I have also been referred to MLP Policy S5 designed to regenerate the central area of Maldon and Heybridge. The retention of a container and a timber structure to serve as a takeaway would not be in the spirit of what the policy overall is trying to achieve in regenerating The Causeway and central area of Heybridge. As such the use would not be appropriate in the context of Policies E1 and S5 of the Local Plan.

Character and Appearance

12. The site with the container/shelter on it is in a prominent location on the approach into Heybridge and, notwithstanding the fact that the site is set down slightly lower than the road and the low height of the structures themselves, they are still intrusive in the street scene viewed from the south along the Causeway.

13. Moreover, viewed from the east on public footpath 45 the rear view of the combined structure of the container, shelter and billboard hoarding appears highly intrusive and detrimental to an area where the emphasis is on regeneration and improvement.
14. The design of the takeaway utilising a container and timber built structure is poor. Whilst I accept that the repurposing of containers is now common, these are more typical as temporary structures on sites in transition. I acknowledge that the Causeway area is a commercial / industrial location where it has been put to me that more work-a-day, functional structures would not be inappropriate. However, this site is right on the edge of the industrial area and also a 'gateway' to the centre of Heybridge and I am not satisfied that the impact of the structure as a permanent or even semi-permanent feature would be acceptable in this context.
15. I have considered whether with the billboard removed as per the decision on appeal ref APP/X1545/Z/22/3309378 and with a unified paintwork scheme the impact on the character and appearance of The Causeway would be acceptable but I am not persuaded that it would.
16. Policy D1 of the MLP seeks to ensure development respects and enhances the character and local context and that it contributes positively towards the public realm around the development. For the reasons above the proposal would fail to achieve these objectives.

Flood Risk

17. Using the Government's Interactive Flood Mapping the site lies within Flood Zone 3a which extends over the whole of the surrounding area including approach roads. The area is at risk from tidal flooding from the Blackwater Estuary / Heybridge Basin and to an extent fluvial flood risk from the River Blackwater. The *Maldon Strategic Flood Risk Assessment* analysis of the tidal flood risk suggests that a breach in tidal defences in a 1 in 200 year event could result in a flood depth across the appeal site of more than 2 metres in depth with a high hazard rating across the area. The Flood Risk Vulnerability Classification in the *Technical Guidance* accompanying the *National Planning Policy Framework* (the Framework) makes it clear that the proposal would fall into the 'less vulnerable' category of use. The Framework requires that a site-specific Flood Risk Assessment (FRA) is carried out for all development within Flood Zone 3a. Although for minor development, such as the appeal proposal, the sequential and exceptions tests are not required, the FRA should demonstrate to the decision-maker how flood risk will be managed now and over the development's lifetime, taking climate change into account, and with regard to the vulnerability of its users.
18. Although the appellant completed the Environment Agency's pro forma matrix in respect of flood risk, confirming development would be no lower than existing finished levels, no FRA for the site and proposal was submitted by the appellants at the time of the application or since.
19. It has been put to me that an FRA could be required by condition. However, the matter of flood risk and how it is proposed to be mitigated is a matter that should be before the decision maker; it is not a matter that should be considered after the decision has been taken. The development would be at significant risk in the event of a flood and, in the absence of an FRA as required by the Framework, the proposal is contrary to both MLP Policy D5 and the Framework.

Highway safety

20. In respect of highway safety it has been put to me that an absence of parking available for the takeaway will result in obstruction on the highway and a detrimental impact on highway safety as well as the potential to obstruct Footpath No 45. By way of context at the time of the site visit (10.15) there was one small van parked off road in front of the shelter and which appeared to be either staff or a takeaway customer. No vehicles were parked on the highway and there was no obstruction to Footpath No 45 which is clearly delineated on site.
21. The main business operating on the site has car parking available on the western frontage of the site in front of the main building and along the northern boundary of the site adjacent to Footpath No 45. These were not fully occupied at the time of my visit and are not specifically allocated for JJ Plastics staff and customers only and it is confirmed in the appellant's statement that customers to the takeaway would be able to park in these areas. I acknowledge that these spaces are not all marked on the plans submitted with the application nor clearly on the ground but, were the appeal to be allowed, the delineation of the parking spaces could be a condition attached to any permission.
22. The appellant states in his appeal statement that such a condition would be accepted. With that in place, coupled with the fact (evident from the site visit) that some trade to the takeaway is walk-in trade I am satisfied that this small scale use would not conflict with Policy T2 of the MLP or give rise to problems for highway safety.

Other Matters

23. It has been put to me that the proposed use would help to support the main business operating on the site by generating a secondary income stream and making best use of an area of the site that is otherwise not required. However, the use as a takeaway is not directly related to or ancillary to the JJ Plastics business and I am not persuaded that there would not be some other more appropriate use that would support the business in this way. Despite the importance given in Paragraph 81 of the Framework to supporting economic growth and productivity I am not satisfied that this would outweigh the harm set out above.

Conclusion

24. Notwithstanding the fact that any parking and highway safety issue could be resolved by condition, the above assessment shows that the proposed takeaway use would not be appropriate in the Causeway Designated Employment Area in the context of Policies E1 and S5. Moreover its retention would harm the character and appearance of The Causeway and it has not been demonstrated how the development would respond to flood risk. Accordingly, the appeal should be dismissed.

P. D. Biggers

INSPECTOR