
Appeal Decision

Hearing Held on 3 May 2023

Site visits made on 2 and 4 May 2023

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2023

Appeal Ref: APP/W0734/W/22/3313867

Land at Low Lane, Middlesbrough TS5 8EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by ML Retail (Development) Ltd against the decision of Middlesbrough Borough Council.
 - The application Ref: 20/0510/OUT, dated 1 September 2020, was refused by notice dated 3 September 2022.
 - The development proposed is commercial development (Use Class E) including access, parking, and associated infrastructure and development.
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Preliminary Matters

1. As was made clear in the planning application this proposal was made in outline, with matters of access, layout and scale to be determined at this time. The reserved matters therefore cover appearance and landscaping.
2. It was explained at the hearing that the impetus for the proposed development stems largely from the fact that there is significant ongoing residential development to the north of the appeal site (the Brookfield development) and other existing housing which lacks convenient access to retail facilities. It was asserted that there is market demand for the proposals which is driven by occupiers of the housing to the north, and that this market demand, coupled with the availability of the site, would provide for an identified retail need.
3. The planning application was refused for 7 reasons. These have areas of overlap and in considering this appeal I have identified in the main issues below the principal controversial matters, as discussed at the hearing.

Decision

4. The appeal is dismissed.

Main Issues

5. The main issues in the appeal are:
 - (a) Whether the Appellant has satisfied the sequential and impact tests for retail development;
 - (b) The effect of the proposed development on local highways and transport conditions, and accessibility;

- (c) Whether the proposed development is in an acceptable location, would be of an acceptable quality and provide a suitable environmental impact.

Background and Context

6. The proposal involves the provision of up to 1900m² of floorspace for a limited assortment discount foodstore, up to 1858m² for a variety store or variety store and foodstore, up to 552m² for commercial units of 92m² each (6 units), and up to 180m² for a drive through unit. Access would be taken from an existing roundabout and the site itself would be encircled by an eastbound slip road from the A174 Teesside parkway and the A1044. The site is undeveloped at present and has been used for agricultural purposes in the past.
7. As was pointed out at the hearing there is a degree of ambiguity about the nature of the proposals. It is, on the one hand, promoted as a development which would serve the residential areas surrounding it, but on the other hand is described for highway trip generation purposes as being more akin to a retail park. The inclusion in the proposals of 2 buildings approaching 1900m², together with 6 smaller units and a drive through facility suggest to me that the nature of the proposal would indeed more closely resemble a small retail park. That is not to say that it would not be capable of serving nearby residential areas for convenience shopping, but it would clearly go beyond that purpose. With that context in mind I turn to the main issues.

Reasons

Sequential and Impact Tests

8. It is not in dispute that the proposed development would be for main town centre uses, nor that the sequential and impact tests set out in the National Planning Policy Framework (NPPF) should be undertaken. There is also no dispute that the appeal site is neither in nor on the edge of a centre.
9. The sequential test in this case was carried out using a 5 minute drive time as the basis for establishing the catchment. That excludes the closest district centre at Coulby Newham (the Parkway Centre). There was some discussion in relation to whether the 5 minute drive time was an appropriate measure, but in any event the Appellant included the Parkway Centre in its sequential analysis. I heard from representatives of owners of that centre (Evolve Estates Ltd) at the hearing. There is a continuing aspiration to provide more retail floorspace there, as evidenced by ongoing proposals.
10. On the face of it, therefore, despite being outside the identified catchment, it would seem that a site might be available at the Parkway Centre. However, it is not as simple as that. Principally that is because the proposal at the Parkway Centre has an end user in mind who would wish to take up the proposed space should it be developed. That being the case it seems unlikely that the land at the Parkway Centre could be realistically identified as being available to the current Appellant.
11. Although the Appellant argued that the land at the Parkway Centre would in any case be unsuitable, I am not persuaded by that argument. The proposed development, with some reasonable flexibility, could be accommodated there. In short, although there is land available at the Parkway Centre which would be suitable, it cannot be regarded as available.

12. I note here that the proposed provision of retail facilities in a local centre in the Brookfield residential development to the north has not been considered in relation to the sequential test as it is not, as yet, an identified centre in any town centre strategy. It is agreed between the Appellant and the Council that it would not be appropriate to include the Brookfield proposal in the sequential test. As the centre does not yet exist I endorse that position.
13. There is common ground between the parties that no other sequentially preferable sites have been identified which would be suitable or available to accommodate the proposal. Taking these matters into consideration I am satisfied in this case that the sequential test, as set out in the NPPF, has been met.
14. Turning to the impact test the Appellant has provided information relating to anticipated trade diversion to the appeal site if developed as proposed. The Council has employed a retail expert to consider this information. Although there are some concerns expressed, the Council's evidence is that the Appellant's information can be broadly justified insofar as it shows that there would be unlikely to be significant adverse impacts on other existing centres if the development were to proceed.
15. That is not a position shared by Evolve Estates. Its evidence is that approval of the proposed development would indeed have an adverse impact on the Parkway Centre. In particular it is noted that since the Appellant's impact study was carried out trading conditions at the Parkway Centre have deteriorated, with premises being vacated and rental returns being squeezed. Furthermore, it is contended that the Brookfield development area is already served for convenience goods by the Parkway Centre, and that the impact of the proposal has been underestimated. I also heard that the putative occupier of the proposed new floorspace at the Parkway Centre may well choose to pull out if the appeal proposal were to be permitted. As such Evolve Estates does not share the same position as the Appellant on the vitality and viability of the Parkway Centre.
16. The impact test is a difficult area in which to be precise. At present it is complicated by other factors such as the prevalence of online retail and the aftermath of the covid19 pandemic. My own observations of the Parkway centre suggest that it is in reasonable health, but as noted, there are recently vacated premises. It is fair to record that it is not in the same position as it may have been in recent years. In addition, the offer which would be forthcoming at the appeal site would undoubtedly draw trade from the Parkway Centre, especially as it would be intended to include food retail and discounted goods stores.
17. There is no definition of what might constitute a significant adverse impact in the context of the impact test. National Planning Practice Guidance indicates that in areas of high vacancy or low retailer demand even modest trade diversion may lead to significant adverse impact. But I do not consider that to be the case at the Parkway Centre. Although I agree that some modest trade diversion would occur, and that this would be likely to have an adverse impact, I do not accept that the impact would reach the threshold of being of sufficient significance such that it would suggest the proposal should be refused for that reason.

18. As noted, the proposed facilities at the Brookfield development do not as yet exist. It is clear, though, that these facilities have been a long standing aspiration of the wider residential allocation here. It is therefore reasonable to consider whether the appeal proposal would have any impact on what is, in reality, planned investment. I acknowledge, however, that there is nothing before me which identifies the details of the planned investment at the Brookfield development. It is included in Policies H5 and H21 of the Middlesbrough Housing Local Plan (HLP) and is described as a local centre to be provided in a central location. In my judgement it is clearly an integral and important part of the HLP allocation.
19. The appeal proposal would be proximate to the Brookfield development but would not be central to it. It must be open to question whether a second convenience retail centre within the central core of the development would be likely to come forward if the appeal proposals were to be permitted. Although the Council's retail expert does not afford significant weight to this matter given the lack of detail of proposals for Brookfield it seems to me that the application of simple logic indicates that the appeal proposal would be likely to have a significant adverse impact on the potential for investment in a local retail centre within the Brookfield allocation. Although no planning application has yet been submitted which includes details of the Brookfield local centre it is identified in the masterplan for the Stainsby Country Park which was published in June 2022. This is not part of the development plan but clearly indicates the commitment to a local centre which is central to the Brookfield allocation. The document clearly explains that the new community and commercial hub proposed would be at the heart of the community. In my judgement this should attract at least moderate weight as any inhibition of the proposed Brookfield investment would be damaging to the intention of the HLP allocation.
20. I am of course aware of the decision in the Scotch Corner case¹, and the Inspector's finding there that in order to be considered as planned investment a project should be at a very advanced stage. The Secretary of State agreed. However, in reading the reasoning leading to that finding it is clear that the Inspector was unconvinced by the evidence in relation to the most comparable site to this appeal (Northallerton Town Centre) and identified likely problems with the planned investment there. That seems to me to be different to this case as there is no suggestion that the Northallerton site was allocated in a development plan, albeit that a masterplan had been produced. In short, the Northallerton proposal appears to have been rather more speculative than in the case before me, in which the Brookfield centre has been a long-standing policy proposal with a subsequent masterplan. Additionally, the Council's evidence shows that the developers at Brookfield have indicated that a planning application will be submitted this year. It cannot therefore be reasonably argued that there is no likely development partner here.
21. Taking these matters in the first main issue together it is my judgement that the proposed development could not be accommodated on a sequentially preferable site since none is likely to be available in an established centre. In addition, the impact of the proposal is not likely to have a significant adverse impact on existing centres. However, there would be likely to be a significant adverse impact on planned (though as yet unquantified) investment in a local

¹ APP/V2723/V/15/3132873 & APP/V2723/V/16/3143678

centre at Brookfield. Hence, I am not satisfied that the proposal has fully met the impact element of the necessary tests. But in any event it is of course crucial that I consider all other material considerations before reaching a final decision on this proposal.

Highways, Transport and Accessibility

22. Highway modelling has taken place using a number of scenarios. These include the trip rates which would be expected for a small retail park, but also the trip rates which would result from a local centre. Further modelling also included cumulative impacts from known or likely development elsewhere.
23. What the modelling indicates, as neatly summarised in the Council's response to traffic generation mitigation proposals, is that the increase in traffic through the worst affected locations would be somewhere between 2.9% and 6.2% during peak periods. Quite apart from whether the mitigation would be deliverable (the Council says not) these are not significant increases in the context of the overall flows in the locality. It seems to me, therefore, that there would not be a severe residual impact on the network in the scenarios tested. The predicted increase in traffic flows is not therefore a reason for withholding planning permission.
24. However, the traffic and transport matters in play here do not only revolve around traffic flows and congestion. A significant factor to be considered is the location of the site in relation to travel other than by private cars.
25. As I noted earlier, the site is encircled by roads. There is currently no access provision other than that which might be required for agricultural purposes. There are no joined-up footways fronting the site and no opportunity to provide them other than in the area immediately adjacent to the roundabout access point. Bus stops exist to the west of the site, which are linked to the half hourly to hourly bus service services in either direction. These are local services which pass through nearby residential areas and could potentially deliver shoppers to the appeal site. Anyone using this service would be required to cross a dualled section of the A1044 when alighting from or hailing one of the services. There is no light controlled crossing place close to the bus stops and a narrow central reservation on a road which is well used.
26. For pedestrian or cycle access to the site it is proposed that some new facilities would be installed to the north of the site, where a toucan crossing would be allied to a wider central reservation. This would offer some assistance to residents or others approaching from the residential area to the north. But from the south there is no real prospect of comfortable access on foot or by cycle. The A174 parkway road is a barrier and despite the presence of a cycle and foot bridge² it is highly unlikely that pedestrian or cycle trips would be attracted to the appeal site. There are a number of reasons for this. First, the bridge itself has quite steep gradients. Secondly the route is not direct but has significant doglegs which lengthen it. Thirdly, even with the recently improved access along part of the south side of Low Lane it would still be necessary to make multiple crossings of busy roads. In short it is my judgement that the residents of the areas to the south of the A174 would not under the majority of circumstances choose to walk or cycle to the appeal site.

² The 'curly wurly' bridge.

27. I do accept that it would be more likely that residents from the Brookfield development would have more incentive to walk or cycle since the impediment to site access are significantly fewer. Nonetheless it would still be necessary to cross the dual carriageway A1044, which in itself is not an attractive proposition. I note that a road safety audit has concluded that the improvements to accessibility proposed would make access to the site safe. However, that is not the same as making it attractive for use on foot or by cycle.
28. In essence it is my judgement that this site would be substantially more likely than not to attract car borne customers. As a development at least akin to a retail park it would be likely to become a destination in its own right, especially with facilities such as a drive through. It does not have linkages or potential for improved linkages which would encourage potential customers to walk or cycle to the proposed facilities. It would therefore fail to deliver the alternative travel options which are sought in the NPPF and the development plan. In particular it would run counter to Core Strategy policies CS4 and CS17, both of which seek to promote accessibility other than by the private car.
29. Taking this issue in the round it is my judgement that the proposed development, although not creating unacceptable congestion, would fail to deliver a suitably accessible development for use other than by private car. It would therefore conflict with the development plan and the NPPF.

Location, Quality and Environment

30. It is clear from the preceding issue that I do not accept that the appeal site proposals can offer an acceptably accessible location for the development. This is in large part because of the fact that the site is surrounded by highways and as such is divorced from the catchment it purports to seek to serve.
31. The layout and scale of the proposal shows that the appeal site would be almost entirely taken up by hard surfaced car parking and vehicular circulation, and by significant buildings. The north-western boundary of the site stretching in both directions from the existing roundabout is open and affords full views into and across the site. From this location the land simply appears as an unremarkable but unobtrusive open field. Significantly it is bounded to the south and east by dense tree belts which screen much of the highway infrastructure around the site. So whilst the site is clearly within an urban area, and traffic noise is ever present, it is not overtly perceived as urban land as such.
32. The introduction of the 2 main buildings, run of 4 smaller units to the north, and the drive through, would severely intrude on the present perception of the area. From being an open field with a green backdrop it would become land dominated by buildings and vehicles. There would be little room remaining to enable any form of peripheral landscaping with which to soften the impact. Taken overall it is my judgement that the location and scale of the buildings proposed would result in an unacceptably harmful visual impact in this location. In making that judgement I recognise that appearance is a reserved matter and that some mitigation could occur through excellence in the design of the buildings. As pointed out at the hearing, housing to the north is at a height which would probably be similar to the buildings proposed on this site. But the housing is not in the form of large rectangular structures as 2 of the buildings here are. In addition the houses are, individually, of a smaller scale and have

a very different visual impact. I am not satisfied, therefore, that the proposed buildings, even if of excellent design quality, would be able to overcome the impact of the scale of development coupled with the parking, servicing and circulation areas proposed.

33. The site would be very much dominated in its centre by facilities for vehicles. Anyone attracted to the site on foot or by cycle (which I have made clear I consider to be a small number) would be faced with limited assistance for ease of access. Footways would lead to the site entrance from bus stop and signalised crossing locations, but thereafter the site would not be a welcoming environment. The overall layout has clearly been designed to facilitate access by cars, with very little apparent attention being given to other users of the site.
34. I also share the Council's reservations in relation to the location and configuration of the proposed drive through facility. It is very easy to believe, based on experience elsewhere, that this would create difficulties for the efficient circulation of vehicles on the site. There would be obvious potential for blocking of spaces by customers queuing for the drive through, with attendant delay and inconvenience.
35. Furthermore, the servicing of the proposed buildings seems to me to be inadequately considered. There is no segregation between most servicing and the general parking and circulation area. There would be significant risk of service vehicles being hindered by drive through and other traffic. Service vehicles would in themselves be using much of the same area used by car borne customers, pedestrians and cyclists. The risk of accidents, inconvenience and delay cannot be ignored when large vehicles and all other forms of traffic on site are in conflict.
36. I can summarise my findings succinctly on these matters. First, the scale and layout of the proposal would be harmful to the appearance of the location in which it would be situated. Secondly it would offer little in the way of attraction for anyone other than those using private cars. Thirdly, the layout of the site would involve significant risk of inefficient circulation, potential for inconvenience, delay and attendant safety concerns.
37. Core Strategy Policy CS5 (which is agreed by the parties as a relevant policy in this case) requires development proposals to demonstrate a high quality of design. The proposal fails to deliver on that objective and is in conflict with the development plan in this respect.

Overall Conclusion

38. In my judgement this is the wrong development in the wrong place. It would not follow the aspirations expressed by the Royal Town Planning Institute to provide for well connected developments. It has the hallmarks of being a scheme designed to maximise floorspace rather than truly provide a local centre for the nearby residential areas. In my judgement these are serious flaws of approach. Even if the proposal was on all fours with the sequential and impact assessments (which it almost is, except for one identified adverse impact) it would not be acceptable for other reasons as I have explained earlier. The proposal is in conflict with the development plan, the policies of which, as set out above, are in broad alignment with the NPPF. There are no material considerations which are sufficient to outweigh this conflict.

39. For the reasons given above I conclude that the appeal should be dismissed.

Philip Major

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Sobic	Director, Savills
Mr T Chau	Director, Cora IHT Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Ms C Bell	Counsel
Mr D Gregg	Associate Director, Lichfields
Mr A Glossop	Middlesbrough Borough Council
Mr S Thompson	Middlesbrough Borough Council
Mr P Clarke	Middlesbrough Borough Council

INTERESTED PERSONS:

Mr C Martin	Planning consultant, Pegasus Group
Mr P Murphy	Evolve Estates Ltd
Mr A Liddle	Chair, Stainton and Thornton Parish Council
Mr B Cooper	Councillor, Middlesbrough Borough Council

DOCUMENT SUBMITTED AT THE HEARING

Technical note in response to the Council's note on highway mitigation