



Appeal Decision

Site visit made on 3 April 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/T1410/W/22/3300077

Land at Tesco Extra Car Park, Lottbridge Drove, Eastbourne, BN23 6QD

- 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 Tesco Stores Ltd and Life Property Eastbourne Ltd against the decision of Eastbourne Borough Council.
- The application Ref PC/210772, dated 27 August 2021, was refused by notice dated 14 December 2021.
- The development proposed is the re-location of the 'Click and Collect' facility from the car park to the Tesco store with associated works; re-configuration of the car park and internal car park access; the re-location of the re-cycling area within the car park; the erection of two coffee shops with drive-through facilities (Class E) with associated landscaping, car parking and pedestrian access.

Decision

1. The appeal is allowed, and planning permission is granted for the re-location of the 'Click and Collect' facility from the car park to the Tesco store with associated works; re-configuration of the car park and internal car park access; the re-location of the re-cycling area within the car park; the erection of two coffee shops with drive-through facilities (Class E) with associated landscaping, car parking and pedestrian access at Land at Tesco Extra Car Park, Lottbridge Drove, Eastbourne, BN23 6QD in accordance with the terms of the application, Ref PC/210772, dated 27 August 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Tesco Stores Ltd and Life Property Eastbourne Ltd against Eastbourne Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council did not submit a statement by the deadline of 30 November 2022. Furthermore, no extraordinary circumstances were advanced for an attempted late submission. I have dealt with the appeal on this basis.
4. A lack of a financial contribution as requested by the County Highway Authority (CHA) has not been listed as a reason for refusal on the Council's decision notice, even though the response from the CHA was available to the Council a number of days prior to the date of its meeting and the date on which the Council's decision notice was issued. However, given the lack of a statement from the Council and an overall lack of clarification on the matter, I shall address the matter in this decision.

Main Issues

5. The main issues of this appeal are the effect of the proposed development on:
- highway safety; and,
 - the living conditions of neighbouring occupiers through noise disturbance and air quality.

Reasons

Highway safety

6. The planning application had been recommended for approval by Council officers, in the absence of objection on highway grounds from its internal specialist consultees. It can only be deduced from the minutes of the meeting that took place on 14 December 2021 that Council members relied on their own assessment of the submissions, informed by their familiarity with the site and local conditions, to refuse the application for this reason.
7. There is no clear technical evidence before me to justify a conclusion that the proposed development would result in congestion or excessive vehicle movements that would give rise to a safety risk for pedestrians and road users. I accept, that in the vicinity of the site there is a record of poor highway safety, but note that the County Highway Authority (CHA) accept the findings of the appellant and raise no objections, subject to a number of conditions. Reference to financial contributions is also noted, but I shall address this later in my decision.
8. The CHA accepts that the survey confirms that adequate car parking would remain within the site and the majority of trips to the site will be pass by, diverted trips or shared trips. Thus, the CHA considers that the proposed development is unlikely to have a significant impact on the local network. In the absence of substantive evidence to the contrary, I agree with the views expressed by the CHA, which are a material consideration of significant weight. In this instance, unacceptable development could be made acceptable, through the imposition of suitably worded conditions.
9. For the reasons given above, I conclude that the proposed development would not give rise to conditions prejudicial to highway safety. Therefore, the proposed development complies with the highway safety aims of Policies D8, D10A, DM10 of the Eastbourne Core Strategy 2013 (CS), which seek sustainable travel, where locations that are well served by a variety of transport methods, especially public transport and taking account of a sense of place, safety and security. The scheme would also accord with the requirements of the National Planning Policy Framework (the Framework), particularly paragraphs 110 d) and 111.

Living conditions

10. The appellant has provided detailed submissions on noise and air quality, which have been undertaken by suitably qualified authorities and in the absence of an equivalent report on the part of the Council, I have given these documents significant weight. It is also evident that during the course of the application, the appellant no longer pursued night time operations and confirmed the opening hours will be between 6am to 11pm. Deliveries would also only occur

during these times and the site would be secured by a vehicular access gate to prevent vehicular use during non-opening hours to prevent neighbour disturbance throughout the night.

11. The Council's Specialist Advisor in Environmental Protection (EP) has confirmed that the submitted information demonstrates that the noise generated from the proposal would be within acceptable tolerances. I also note the proposed acoustic fence, which would further reduce any noise. Whilst the comments from EP are subject to a number of conditions they form a material consideration of significant weight.
12. The issue of air quality is a concern raised by local residents. I accept that the proposed occupants would not generate excessive odour, given the nature of their businesses. I also note the distance from the nearest dwellings, particularly those on Seaside and Northbourne Road, which is sufficient to provide additional mitigation. However, I recognise that the occupants could change during the life of the development, which may or may not require planning permission. Thus, in order to safeguard the residential amenity of neighbouring occupiers, it would be necessary to ensure that any plant or machinery would be suitable for its intended purpose. Thus, in respect of potential noise and odour from the proposed units, unacceptable development could be made acceptable, through the imposition of suitably worded conditions in this instance.
13. With regard to the comments surrounding noise and fumes from vehicles attracted to the site, I consider that from an operational perspective, the existing use of the site as a car park with a 'Click and Collect' facility for an existing supermarket weigh in favour of the scheme. Furthermore, the proposed opening hours and the gating of the site would bring benefits to local residents, as this would reduce the accessibility of the site. Anti-social behaviour, particularly from motor vehicles would also be prevented through the scheme. Additionally, it has been confirmed that no deliveries would occur outside of the opening hours. All of these matters could be secured through the imposition of suitably worded planning conditions.
14. For the reasons given above, I conclude that the proposed development would not be harmful to the living conditions currently afforded by existing local residents. Therefore, the proposed development complies with the amenity aims of CS Policy B2, which seeks to protect the residential and environmental amenity of existing and future residents, amongst other things. The scheme would also accord with the requirements of the Framework, particularly paragraphs 105 and 174.

Other Matters

15. A planning contribution of £24,000.00 and £750.00 has been requested by the CHA to install Real Time Passenger Information (RTPI) signs at the two nearest bus stops and the administration of the 'Bus Stop Clearway', respectively. The appellants have expressed their surprise at this request, as it was not previously requested during pre-application discussions. I also note that no such financial contributions are mentioned in the Officer Report or the minutes of the meeting.
16. Very little detail has been provided by the CHA in support of the requested financial contributions. Other requests made during the discussions between

the appellants and the CHA, which include the additional pedestrian access to the site from Lottbridge Drove, the size of the car parking spaces and the provision of Electric Charging Points, have all been incorporated within the scheme. The appellant has confirmed that the proposed development would attract a contribution towards Community Infrastructure Levy. Whilst this may be the case, given the circumstances surrounding this appeal, I still need to be satisfied that the financial contributions requested by the CHA meet the tests outlined in paragraph 57 of the Framework and the Planning Practice Guidance (PPG). These tests apply whether or not there is a levy charging schedule for the area.

17. In this instance and given the terms of the request, there is no evidence to suggest that a planning obligation is required to mitigate the impact of unacceptable development to make it acceptable in planning terms. Consequently, I find that the financial contributions sought by the CHA are not necessary to make the development acceptable in planning terms, directly related to the development or fairly and reasonably related in scale and kind to the development. Thus, withholding planning permission on the basis of the absence of a planning obligation to secure the requested financial contributions from the CHA would not be justified.
18. Whilst noting some support for the scheme, I have had regard to a number of objections received from local residents, expressing a wide range of concerns including, but not limited to the following: anti-social behaviour, rubbish, vermin, effects on local businesses, similar drive-throughs in the locality, deliveries, foul drainage, proximity to schools, sustainability, light pollution, amongst other things. However, I note that these matters were considered where relevant by the Council when it determined the planning application. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Conditions

19. The Council has suggested conditions which it considers would be appropriate in its submission. I have reviewed these in accordance with the tests set out in the PPG and have amended the wording where necessary in the interests of clarity and simplicity.
20. Pre-commencement conditions are required for archaeology, a Construction and Environmental Management Plan (CEMP) are all reasonable and necessary in interests of archaeology and the surrounding environment. Pre-occupation conditions are required for the approved surface water drainage scheme and management plan, fixed plant and machinery, boundary treatments, car parking spaces/vehicular turning areas, cycle parking facilities, refuse and recycling storage, lighting scheme and a litter management plan are all reasonable and necessary in the interests of the environment, living conditions of neighbouring occupiers, highway safety, character and appearance/visual amenity.
21. Other conditions are required for electric vehicle charging points, opening hours/site security, trees, landscaping, flood risk, car parking spaces, deliveries and travel plan are all reasonable and necessary in the interests of providing an alternative method of transport, living conditions of neighbouring occupiers, ecology, character and appearance, the environment and highway safety.

22. I have not included a condition to provide evidence of the drainage works being constructed as approved, as this would be secured under Building Regulations legislation.

Conclusion

23. I have found that the proposed development accords with the development plan when taken as a whole. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.

24. For the reasons given above, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

SCHEDULE OF CONDITIONS

Time limit

1) The development hereby permitted shall be begun before the expiration of three years from the date of permission.

Approved drawings

2) The development hereby permitted shall be carried out in accordance with the following approved drawings: 15792-P1-100 Rev B – Location Plan; 15792-[P1]-103F Proposed Site Plan; 15792-[P1]-104F Proposed Context Site Plan; 15792-[P1]-105F Proposed Detailed Site Plan; 15792-P1-106 Rev B - Proposed Site Sections/Elevations; 15792-P1-107 Rev B - Proposed Site Sections; 15792-[P1]-121 - Proposed Acoustic Fence Elevation; 15792-[P1]-108D Proposed Boundary Treatment; 15792-P1-109 Rev B - Unit 01 Ground Floor and Roof Plan; 15792-P1-110 Rev B - Unit 01 Elevations; 15792-P1-111 Rev B - Unit 01 Proposed Sections; 15792-P1-112 Rev A – Unit 02 GA Plan and Roof Plan; 8819-D-AIA Rev A – Existing and Proposed Site Plan – Trees; 15792-P1-113 Rev A - Proposed Unit 02 Elevations; 15792-P1-114 Rev A - Unit 02 Proposed Sections; 15792-P1-116 Rev B - Proposed Tesco Car Park; 15792-[P1]-117B Acoustic Screen Fence Boundary Detail and 15792-VL_L01 Rev C – Landscape Plan.

Pre-commencement

3) Prior to the commencement of development, the applicant shall secure the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been first submitted to and approved in writing by the local planning authority. An archaeological site investigation and post investigation assessment shall then be undertaken in accordance with the programme set out in the approved written scheme of investigation and no phase of the development shall be brought into use until the archaeological site investigation and post investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) for that phase has been completed and approved in writing by the local planning authority.

4) Prior to the commencement of development, and the subsequent approval archaeological site investigation as set out in condition no.3 above, a construction method statement to show the preservation in-situ of significant archaeological

remains shall be first submitted to and approved in writing by the local planning authority.

5) Prior to commencement of the development, a CEMP shall be submitted to and approved in writing by the Local Planning Authority, which shall provide details as appropriate but not be restricted to the following matters,

- the anticipated number, frequency and types of vehicles used during construction;
- the method of access and egress and routing of vehicles during construction;
- the parking of vehicles by site operatives and visitors;
- the loading and unloading of plant, materials and waste;
- the times of any deliveries related to the development, which should avoid peak travel times;
- the storage of plant and materials used in construction/demolition of the development,
- the erection and maintenance of any security hoarding;
- the provision and utilisation of wheel washing facilities or any other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
- dust and/or any pollutants;
- confirmation of no burning of materials on site;
- measures to manage flood risk during construction; and
- details of public engagement both prior to and during construction works.

Pre-occupation

6) Prior to first use and occupation of the proposed development, a surface water drainage scheme shall be implemented in accordance with the submitted Drainage Strategy, by Paul Owen Associates (Ref: DS/01 Rev P3, dated June 2021). The scheme shall be carried out or supervised by an accredited person. An accredited person shall be someone who is an Incorporated (IEng) or Chartered (CEng) Civil Engineer with the Institute of Civil Engineers (ICE) or Chartered Institute of Water and Environmental Management (CIWEM).

7) Prior to first use and occupation of the proposed development, a maintenance and management plan for the entire drainage system shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall cover the following points:

- i. This plan should clearly state who will be responsible for managing all aspects of the surface water drainage system, including piped drains; and
- ii. Evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development

The drainage system shall be maintained in accordance with the approved details for the lifetime of the development.

8) Prior to first use and occupation of the proposed development, details of any fixed plant and machinery including customer order systems serving the development, hereby permitted, and any mitigation measures to achieve this condition and with particular regard to noise and odour emissions, are submitted to and approved in writing by the local planning authority. The noise rating level of the sound emitted from the site shall not exceed 48 dBA between 0700 and 2300 hours and 37 dBA at all other times. The sound levels shall be determined by measurement or calculation at the nearest residential premises. The measurements and assessment shall be made according to BS 4142:2014.

9) Prior to first use and occupation of the proposed development, the approved boundary enclosures, including the acoustic fence, shall be fully implemented and shall then be retained and maintained for the life of the development.

10) Prior to first use and occupation of the proposed development, the car parking spaces and vehicular turning areas within the proposed development shall be constructed and provided in accordance with the approved plans. The parking spaces shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles. Completion of the amendments to the parking spaces and turning areas within the supermarket car park shall not prevent the use of the proposed development.

11) Prior to first use and occupation of the proposed development, details of secure and covered cycle parking facilities for 8 cycles shall be first submitted to and approved in writing by the local planning authority. Thereafter, the approved details shall be implemented and retained solely for the parking of cycles, maintained and retained for the life of the development.

12) Prior to first use and occupation of the proposed development, details of enclosed refuse and recycling storage facilities shall first be submitted to and approved in writing by the local planning authority. Thereafter, the approved details shall be implemented, maintained and retained for the life of the development and retained solely for the storage of refuse and recycling.

13) Prior to first use and occupation of the proposed development, a lighting scheme (LS) shall first be submitted to and approved in writing by the local planning authority. The LS shall include full specifications of all external lighting, including road lighting and security lighting and shall include their level of illumination, duration, direction and any variation in brightness. Thereafter, the approved details shall be implemented, maintained and retained for the life of the development.

14) Prior to first use and occupation of the proposed development, a Litter Management Plan for the site shall first be submitted to and approved in writing by the local planning authority. Thereafter, the Litter Management Plan shall be implemented within the operation of the scheme and retained for the life of the development.

Other

15) Within six months of the first use and occupation of the proposed development, details of the electric vehicle rapid charging facilities and infrastructure for future connections shall be submitted to and approved in writing by the local planning authority. Thereafter, the facilities shall be implemented in accordance with the approved details, maintained and retained for the life of the development.

16) The premises shall not be open outside the following hours: 6:00am to 11:00pm. The site shall then be secured to prevent customer and delivery vehicular access during the following hours: 11:00pm to 6:00am.

17) No development shall commence until retained trees are protected in accordance with the approved Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement & Tree Protection Plan Rev A, by Hayden's Arboricultural Consultants, dated 07/06/2021.

18) The site shall be landscaped strictly in accordance with the approved Landscape Plan (Ref: 15792-VL_L01 Rev C) in the first planting season after completion or first occupation of the development, whichever is the sooner. Any new tree(s) that die(s) are/is removed, become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which die, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Replacement planting shall be in accordance with the approve details.

19) The development shall be carried out in accordance with the submitted flood risk assessment (ref Flood Risk Assessment Revision B: June 2021 [478-FRA-01-B]) and the following mitigation measures it details:

- Flood resistance and resilience measures as described in Paragraph 3.2.3 of the FRA.

These mitigation measures shall be fully implemented prior to first use and occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

20) The proposed parking spaces within the new development shall measure at least 2.5m by 5m (adding an extra 50cm where spaces abut walls).

21) The development, hereby approved, shall be serviced strictly in accordance with the approved Delivery and Servicing Management Plan, by ADL, Ref: ADL/AP/4506/21A, dated June 2021, for the lifetime of the development.

22) The submitted Travel Plan Statement shall be in operation on occupation of the proposed development and thereafter maintained for a period of five years.

****End of Schedule****