



Appeal Decision

Site visit made on 20 June 2023

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Appeal Ref: APP/P4605/W/22/3312361

Holly Park Estate, Unit 8, Spitfire Road, Birmingham B24 9PB

- 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 REEF Kitchens Ltd against the decision of Birmingham City Council.
 - The application Ref 2022/04709/PA, dated 6 July 2022, was refused by notice dated 16 September 2022.
 - The development proposed is the siting of container to be used as a commercial kitchen and ancillary development.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my visit the container was already in place and was set up for use as a commercial kitchen. The appeal therefore seeks retrospective permission for the development, and I have determined the appeal accordingly.

Main Issues

3. The main issues are the effect of the development on:
 - The character and appearance of the surrounding area; and,
 - Highway safety;

Reasons

Character and Appearance

4. The appeal site is located within a large industrial estate characterised by groups of largely uniform buildings set back from the highway by car parks and small areas of soft landscaping. The buildings are generally simple in appearance but are detailed with brick piers between units, upper floor cladding and a regular pattern of gables. The appeal site itself contains a small car park to the front and a commercial building to the rear, this is part of a wider terrace. The area is characterised generally by a sense of spaciousness and is of a high-quality design for an industrial estate.
5. The development relates to a shipping container that has been placed within the car park to the front of the main building. It has been fitted with a commercial kitchen and has been externally finished with the Wendy's livery.
6. The shipping container is a large feature that takes up a significant portion of the car park to the front of the appeal site. It is also close to the highway

where it is prominent in public views. The car parks to the front of the surrounding commercial units are typically free of built development, especially of the scale before me. While I note skips and large vehicles may use these car parks, they are temporary and would not significantly alter the character of the area. In contrast the container is a permanent and intrusive feature which, given its scale and siting, conflicts with the pattern of development and erodes the quality and spaciousness of the street scene.

7. I note that the appellant considers the finish of the container, namely the logo and colours of the Wendy's company, to be of a high-quality. However, in this instance, and coupled with the boxy, utilitarian design of the container, it jars with the more traditional and modestly detailed, commercial units. Cumulatively, the design, appearance and scale of the container results in an alien feature that detracts from the quality and largely uniform character of the commercial units. Although a condition could be used to require an alternative external finish, this would not be sufficient to mitigate the harms identified above.
8. There is a small area of planting, which includes a tree, to the front of the site and the appellant has suggested placing planters around the shipping container. However, from my observations on site it was clear that the existing planting does not soften or screen the appearance of the container. From the appellants submissions, including the artists impression, it is clear that the planters would also not make any meaningful difference to the appearance of the container or its prominence within the street scene.
9. Whilst I note planning permission has been granted for a new fence nearby, this is not comparable to the development before me and has not been determinative in my considerations.
10. In light of the above, the development harms the character and appearance of the surrounding area as a result of its scale, prominent siting and incongruous design. It therefore conflicts with Policies PG3 and TP19 of the Birmingham Development Plan which, amongst other matters, require developments to be of a high-quality design that reinforces a positive sense of place and local distinctiveness. The development also conflicts with Chapter 12 of the Framework, including Paragraph 130 which requires that developments are sympathetic to local character, maintain a strong sense of place and add to the overall quality of an area. It also conflicts with the guidance on design set out under Principle 2 of the Birmingham Design Guide which seeks developments to be informed by the surrounding area.

Highway Safety

11. The development provides a 'dark kitchen' for Wendy's to deliver fast-food through third party delivery driver companies, in this case the appellant suggests Deliveroo and Uber Eats. The appellant has submitted that the delivery service is provided by bikes (including bicycles, scooters and motorbikes), and that the main building is used solely for storage associated with the kitchen. However, these matters relate to the running of the business, which could easily change either with the needs of the business or with new ownership. I have therefore considered delivery drivers to make use of bikes and motor vehicles more generally, and I have included the main building within the parking calculations.

12. There is some dispute between the parties as to what use class the development should be considered as for the purposes of parking. However, I note that both have assessed the development against a requirement of 1 car parking space per 60m² as set out within the Birmingham Parking Supplementary Planning Document (the SPD). I find that this would be a suitable starting point and would lead to a requirement of 3.5 car parking spaces. As half a space would not be useable, I find that it would therefore be more appropriate to round this number up to 4 car parking spaces. As I cannot be certain that delivery drivers only use bikes, the 2 car and 5 bike parking spaces suggested by the appellant, as part of their appeal submissions, would not be sufficient. Consequently, I find there to be an under provision of 2 car parking spaces.
13. Although some roads may be able to accommodate on-street parking, Spitfire Road and a number of the surrounding streets are private property and on-street parking is prohibited. Whilst the appellant may have a dispensation to park on these roads, it has not been suitable demonstrated that this also extends to the third-party delivery drivers. Whilst Holly Lane has some areas of unrestricted on-street parking, given the distance from the appeal site it is unlikely that the delivery drivers would make use of this road.
14. Therefore, and given the above, the under provision of off-street car parking spaces risks pushing parking associated with the appeal site towards unsafe or illegal locations. However, whilst the proposed number of parking spaces would not be sufficient, it is clear from the submitted plans that at least 4 car parking spaces could be provided on site. Therefore, in the event that the appeal were to be allowed, a condition could be used to require the submission of a suitable parking plan. In this way, and subject to such a condition, there would be no risk to highway safety.
15. Moreover, the surrounding highway network, both private and public, is made up of wide carriageways and large junctions that are clearly capable of accommodating significant levels of traffic. The development has likely resulted in some increase of movements to and from the site, but this would be easily accommodated by the surrounding network. This is especially so given that the peak times for deliveries associated with the kitchen are outside of those for the more traditional commercial uses nearby.
16. Subject to a suitable condition, the development would not unacceptably harm highway safety around the appeal site. The development therefore complies with Policies DM14 and DM15 of the Development Management in Birmingham Development Plan Document which requires developments do not unacceptably harm highway safety and provide sufficient parking provision to meet their operational needs. The development also complies with the aims of the Framework as set out within Chapter 9, and in particular Paragraph 110-112, as well as the guidance contained within the SPD.

Other Matters

17. Although not raised as a reason for refusal, I note the Council have concerns as to the functional capacity of the main building as a result of the development. However, the development continues to make use of the main building as storage for the kitchen. From my observations on site and the submissions before me, I do not find that the development has made this an unviable use.

18. Whilst the development may not harm the living conditions of neighbouring residential occupiers, this not a benefit in itself. I have therefore afforded this matter neutral weight in my considerations.
19. The appellant has submitted that the site was 'under-utilised' land and that the development has created 20 jobs. However, it has not been demonstrated how the site was not fully utilised or that the development has increased the number of jobs that the appeal site could accommodate. Similarly, it has not been demonstrated that the development significantly increases delivery speeds.
20. The appellant has suggested that a condition be applied requiring the removal of the container at the end of its use. However, this does not mitigate the harm resulting from its presence and there is no evidence to suggest that the commercial need for the use would be in any way time-limited.

Conclusion

21. The proposal would harm the character and appearance of the area, and would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Samuel Watson

INSPECTOR