
Appeal Decision

Site visit made on 12 June 2023

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2023

Appeal Ref: APP/M0933/W/23/3315309

Duke of Cumberland Inn, 1 Appleby Road, Kendal LA9 6ES

- 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 Punch Partnerships (PML) Limited against the decision of South Lakeland District Council.
 - The application Ref SL/2021/0175, dated 19 February 2021, was refused by notice dated 26 August 2022.
 - The development proposed is Erection of convenience store, retention of public house with redesigned beer garden, reconfigured car park including retained vehicular access from Shap Road and relocated vehicular access from Appleby Road, introduction of a service layby on Appleby Road and provision of a pedestrian crossing on Appleby Road.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. South Lakeland District Council is no longer in existence as a result of local government re-organisation in Cumbria. The former South Lakeland District now forms part of a larger unitary authority known as Westmorland and Furness Council who are the local planning authority.
3. I am informed that the development plan for the area in relation to the appeal remains the same as when the decision was originally made by the Council. I have therefore considered the appeal against these policies which have been put before me.

Main Issues

4. The first main issue is whether a convenience store would be appropriate within this location having regard to development plan policy and other considerations. The second main issue is whether the proposal would comply with development plan policy which seeks to steer new development away from areas at the highest risk of flooding. The third main issue is whether there would be any unacceptable adverse impact on highway safety with particular regard to the effect the level of on-site parking would have on the road network including on street parking for local residents.

Reasons

Location of convenience store

5. The proposal involves the provision of a convenience retail store (the appellant would appear willing to accept a condition restricting goods for sale to convenience

only) within part of the car park of the Duke of Cumberland Public House (DCPH), located close to the corner of the A6 and Appleby Road (A685) towards the north-eastern corner of Kendal. The evidence indicates that the store is intended to serve residents within this part of the town.

6. However, given that both of the roads perform an inter-regional function and connect with the M6, the store would draw its custom from a wider base than the north-eastern side of Kendal. Its parking provision would also appear suited to this purpose.
7. Available sites have been drawn to my attention within Kendal Town Centre. However, having visited the site and also considered its relationship to the town centre, I find it unlikely that the type of store proposed, drawing in custom from the local area and passing traffic would divert significant levels of footfall from the town centre.
8. This is because the walk into the town centre is not insubstantial. Further, customers drawn from passing trade associated with the A6 and A685 would be likely to have to park up and then access the Town Centre. The evidence indicates that the store would more likely compete for custom with existing local convenience stores and other numerous food based stores on the northern side of Kendal.
9. The provision of a convenience store would result in a main town centre use away from that part of Kendal with apparent town centre sites available.
10. There would subsequently be conflict with Policy CS7.5 of the South Lakeland Core Strategy (SLCS) (2010) and Policy LA1.2 of the South Lakeland Local Plan (2013) (SLLP) which broadly seek to guide retail development to the Town Centre.
11. However, these policies, at their heart, seek to maintain and enhance the viability and vitality of the Kendal Centre. Having regard to the target custom and particular location characteristics before me, combined with the limited size of the proposed store I do not consider that its provision here would serve to have any significant adverse impact on that centre.
12. I therefore conclude on this matter that whilst the proposal would not accord with Policy CS7.5 of the SLCS nor Policy LA1.2 of the SLLP, the principle of a retail store of this particular size and in this particular location would not be unacceptable.
13. I have afforded the matters above significant weight such that they outweigh the policy conflict identified. Nothing within the Framework¹ relating to the above matters (including with reference to the sequential test) alters my position on this given that its approach is similar to that within the development plan, to ensure the vitality of town centres.

Flood risk

14. There does not appear to be agreement between the parties as to whether the site falls within Flood Zone's 2 or 3 and therefore whether it is at medium or high flood risk.
15. Policy CS8.8 of the SLCS and Policy DM6 of the South Lakeland Development Management Policies (SLDMP) (2019) require development to be directed away from areas at highest risk of flooding and be in compliance with the sequential test on flood risk. The Framework advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at

¹ National Planning Policy Framework 2023.

highest risk. The proposal is a type of development which should be subject to the sequential test with regard to Flood Risk.

16. The overall aim of the sequential test is to steer new development to areas with the lowest risk of flooding, and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. This is regardless of the recommendations of the Flood Risk Assessment² which includes an advised minimum floor level. I note the vulnerability classification of the proposal, but the sequential test needs to be satisfied.
17. The Flood Risk Addendum note³ does not identify any sequentially preferable available sites within the now appellant suggested and adopted 500m radius of the appeal site. Guidance states that for individual planning applications subject to the sequential test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed.
18. Given the intended customer base for the store, I consider it reasonable that the sequential test regarding flood risk should also therefore consider other sites within and around north-eastern Kendal, including sites outside of the 500m search radius.
19. I have been provided with examples of where a 500m or similar catchment area has been settled on elsewhere in the Country including two appeal decisions (Refs. APP/E5900/W/15/3137623 & APP/C4615/W/15/3137153). However, each site should be considered on its own merits and there is nothing compelling which indicates the circumstances behind setting those search areas were the same as the locational circumstances before me.
20. The evidence indicates that there are other areas in and around north-eastern Kendal which are at lesser risk of flooding and I cannot be certain that there are no suitable sites available. I acknowledge the findings of the original flood risk sequential test report⁴ but the more recent evidence indicates the appellants belief in a 500m search radius. In any event, I cannot be certain that the findings within that report are still valid.
21. I therefore conclude on this matter that the proposal would conflict with policies S8.8 of the SLCS and DM6 of the SLDMP which seek to steer new development away from areas at the highest risk of flooding.

Highway safety

22. I accept that the site sits within a busy location and at times is likely to be subject to high degrees of traffic passing on the A6 and A685 and I note the junction of these roads immediately to the south of the site.
23. The evidence indicates that there would be quite a reduction in levels of car parking available to the DCPH.
24. There is therefore the possibility for some displacement of cars which would otherwise park in the car park of the DCPH if it were busy and the available parking at capacity. However, the Highway Authority are clear that given that there appears to be some capacity within the local streets, this displacement would not

² Flood Risk Assessment and Drainage Strategy, Duke of Cumberland PH, Aqua Callidus Consulting - February 2021.

³ Pegasus Group Flood Risk Sequential Test Addendum Note for the Erection of a Convenience Store and Associated Works, Duke of Cumberland Inn - January 2023.

⁴ Flood Risk Sequential Test Report (Updated) CPC Planning Consultants Ltd Revised February 2022.

be a highway safety matter. There is nothing compelling within the evidence to enable me to come to any conclusion that differs from this position.

25. I therefore conclude on this matter that there would be no unacceptable adverse impact on highway safety with particular regard to the effect the level of on-site parking would have on the road network including on street parking for local residents.
26. The proposal would not therefore conflict with Policy CS10.2 of the SLCS which amongst other things requires that the expected nature and volume of traffic generated by the proposal could be accommodated by the existing road network without detriment to highway safety. There would be no conflict with Policy DM9 of the SLDMP which amongst other things states that levels of parking provision for any development will be considered on a case by case basis in consultation with the Highways Authority.

Other Matters

27. I note that the convenience store could be considered to provide a community facility that would benefit those residing in the north-eastern corner of Kendal. However, there is nothing within the evidence to indicate that residents here are underprovided for in terms of a retail convenience offering. Further, I was able to note that at the time of my site visit there was a well-stocked existing convenience store on Sandylands Road, only a very short distance from the appeal site.
28. The Council within their appeal statement note that a planning obligation would be required to secure a financial contribution towards the advertisement, processing and implementation of the loading and waiting restriction traffic regulation order. However, as I am dismissing the appeal on other grounds, I have not considered this matter further.
29. I noted at my site visit that construction was ongoing at the former Porsche Centre on Longpool, close to the site. However, I afford that matter limited weight in terms of justification with regard to the acceptability of permitting the proposal before me within an area of flood risk as it is a very different form of development, and information on the full circumstances which may have justified that proposal are not fully before me. Solar panels and an EV Charging point could be secured via a condition.

Planning Balance and Conclusion

30. There would be some economic benefits including but not limited to construction spend and local employment. However, the adverse impacts of placing the store within an area of flood risk would outweigh these benefits.
31. There is nothing to indicate that the decision should be made otherwise than in accordance with the development plan and I therefore conclude that the appeal should be dismissed.

T Burnham

INSPECTOR