



Appeal Decision

Site visit made on 18 April 2023

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/C4615/W/22/3308116

The Moor Centre, Brierley Hill, Dudley DY5 3AH

- 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 Sheet Anchor Ltd against the decision of Dudley Metropolitan Borough Council.
- The application Ref P21/2073, dated 8 November 2021, was refused by notice dated 30 June 2022.
- The development proposed is described as "external alterations to shopping precinct, including installation of entrance doors (to enable subdivision of retail units); partial demolition of Unit 1 to allow vehicular ingress/egress from High Street; partial conversion of Unit 1 to provide public toilet facilities; creation of surface car parking; associated public realm, landscaping, cycle parking and highways works."

Decision

1. The appeal is allowed and planning permission is granted for the external alteration to shopping precinct, including installation of entrance doors (to enable subdivision of retail units); Demolition of Unit 1 vehicular ingress / egress from High Street; Partial Conversion of Unit 5 to provide public toilet facilities; Creation of surface car parking; associated public realm, landscaping, cycle parking and highways works at The Moor Centre, Brierley Hill, Dudley , DY5 3AH in accordance with the terms of the application, Ref P21/2073 , dated 8 November 2021, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are;
 - The effect of the proposed development on highway and pedestrian safety;
 - whether or not the proposed development would preserve or enhance the character or appearance of the Brierley Hill Conservation Area (CA); and
 - open space provision.

Reasons

Highway and Pedestrian Safety

3. The appeal site comprises a shopping centre with two storey red brick buildings facing towards a paved pedestrianised area of open space. Retail shops are located at ground floor, with a snooker hall and gym located at first floor. Other first floors and basement areas are ancillary to the retail uses. Parking for the site is currently provided via a public car park to the rear of the shopping

centre. The appeal site is bound by Moor Street and High Street to the north and east and the existing parking and other commercial buildings to the west and south. The proposed access would be on to a straight section of High Street close to a pedestrian crossing and traffic lit junction between High Street, Moor Street, Cottage Street and Mill Street.

4. The Council's concerns relate to pedestrian safety and traffic flow. At the time of my site visit vehicles regularly passed the proposed access to the site. I appreciate my site visit provided only a snapshot of highway conditions. Nevertheless, based on my observations, it would be reasonable to conclude that the levels of traffic would increase in morning and evening peak hours when traffic is at its heaviest i.e., when people travel to schools and most people commute.
5. Policy TRAN2 of the Black Country Core Strategy (2011) (CS) states that proposals must provide an acceptable level of accessibility and safety by all modes of transport to and from all parts of the development. Paragraph 111 of the National Planning Policy Framework (the Framework) indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
6. The Council are concerned that the proposed development would cause a harmful conflict between vehicles and pedestrians and have a harmful impact on traffic congestion at the nearby junction. The methodology used for traffic information has also been queried by the Council in their Statement of Case.
7. The appeal is accompanied by a Transport Assessment, Transport Technical Note and a Road Safety Audit. Together these note that vehicles travelling to the proposed development would already be on the highway network, that there is good visibility at the proposed access and nearby junctions are not at capacity. The submission also details that the appellant used comparable TRICS data and used LINSIG software to model the junction. The methodologies used by the appellant were not challenged by the Highways Authority.
8. The appeals submission demonstrates that the junction currently operates at 74% capacity, therefore retaining a reserve capacity. The Council challenge this however have not provided evidence of their own. Additionally, would be good visibility that would allow any vehicle exiting the junction to see any oncoming traffic, traffic light changes or pedestrians.
9. Based on the evidence submitted and the comments made by the Highways Authority, and in the absence of any cogent evidence to the contrary, I am satisfied that the conclusions contained within the TA and associated documents have been made on a sound methodology and robust data.
10. Whilst the proposed development would increase traffic numbers in this location, and these vehicles would largely already be on the highway network, it would not over capacitate junctions at peak times to the extent that there would be a significant level of queuing or delays. As such, the local highway network can accommodate the traffic generated from the proposed development.
11. With regards to pedestrian safety, which currently the area is pedestrianised and offers a direct route from the surrounding area to the shopping centre and

parking behind, the submitted drawings detail a pedestrian path along the perimeter of the parking area and a number of crossings within the site. Whilst the route needs to be taken by pedestrians may not be as convenient as the current situation, the submission demonstrates that there are safe walking routes.

12. Although, pedestrians using the pavement along High Street would need to navigate an additional junction, there would be clear visibility at the proposed access to allow pedestrians to safely cross. Vehicles entering or leaving via the new access would be travelling at low speeds allowing for pedestrians crossing the access to be seen. Additionally, the proposal would provide a crossing across its access in close proximity to the junction crossing to encourage a more direct walking route.
13. Accordingly, I conclude that the proposal would not harm highway or pedestrian safety. It would therefore comply with CS Policy TRAN2 which seeks, amongst other things, to ensure that development does not have significant transport implications. The proposal also complies with paragraph 111 of the Framework which seeks to ensure that development does not have an unacceptable impact on highway safety.

Conservation Area

14. The appeal site adjoins the boundary of Brierley Hill Conservation Area (CA). The CA derives its significance from its mix of 19th and 20th century buildings, some which were purposely built as commercial buildings, centred around the historic commercial centre of Brierly Hill.
15. Section 72(1) of the same Act states that special attention must be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Paragraph 199 of the Framework says when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed or lost through alteration or destruction of a heritage asset, or by development within its setting (paragraph 200).
16. The appeal site and shopping centre are a more modern addition to the area, and whilst it utilises red brick, a common material in the area, lacks the architectural detailing of nearby buildings that fall within the CA. Whilst the appeal site is an area of open space that offers views into the CA, it is a large paved area with little landscaping, which detracts from the character and appearance of the wider area and CA.
17. Whilst the proposed development would not screen the proposal from the CA, it would add contrasting paving and additional planting that would add interest to an open area that is currently blank and uninteresting. The addition of tree planting along the perimeter of the parking would soften its impact on the wider area and in views from within the CA. Whilst vehicles and a parking barrier would now be located within what was an open area, their limited height and scale would mean that the nearby CA would remain visible.
18. As such, I am satisfied that the proposal would have a neutral effect on, and therefore preserve, the setting of the CA and the character and appearance of the area. The proposal would therefore comply with CS Policies CSP3, CSP4 and ENV2, Policies S8, S9 and S11 of the Dudley Borough Development

Strategy (2017) (DS) and Policy 59 of the Brierley Hill Area Action Plan (2011) (AAP). These together seek to ensure that developments take account of the locally distinctive character of an area. The appeal scheme would also comply with paragraph 199 of the Framework which seeks to protect heritage assets.

Open Space

19. The Council along with local residents have drawn my attention to the importance that the nearby community place on the appeal site. The proposed development would result in the loss of much of this space, although some space would be retained where events which are currently held on the site, such as the town Christmas tree, could take place.
20. My attention has been drawn to the AAP which identifies primary public spaces and primary thoroughfares in the area. Both the Council, in their Officer Report, and the appellant note that the appeal site is not designated as such a space or thoroughfare within the AAP. However, whilst not stipulated in the reason for refusal, it is clear that CS Policy ENV6, which relates to open space, is intended to cover all public and private open space that contributes to the quality and character of the area. In my view the site is clearly valued by residents as demonstrated by third party objections to the proposal.
21. The policy only allows open space to be developed in exceptional circumstances. However, whilst the proposal would remove a large area of open space within the site, some would be retained as would footpaths connecting it with the surrounding area. This would allow continued access to some space for socialising and future events. Furthermore, as noted by the appellant, the land is currently in private ownership and public access to it could be prevented at any time.
22. In light of the above the proposed development would comply with CS Policies CSP3, CSP4, ENV2 and ENV6 and DS Policies S8, S9 and S11 which together seek, amongst other things, to ensure that create multifunctional spaces and create vibrant streets and spaces.

Conditions

23. The Council has provided a list of conditions, which I have assessed in regard to the advice provided in the Planning Practice Guidance (PPG). I consider that conditions regarding materials, landscaping and tree protections are necessary in order to ensure that the character and appearance of the area is safeguarded. A condition requiring further details on the moving of a locally listed water fountain is required in order to safeguard its future. Cycle parking and EV charging conditions are necessary in order to promote alternative travel methods.
24. I have amended the condition relating to access and parking as sufficient details have already been submitted with the drawings. I have also altered the wording of some conditions in order to ensure they comply with the PPG.

Conclusion

25. The appeal scheme would accord with the development plan and there are no material considerations worthy of sufficient weight that would indicate a decision otherwise. The appeal should therefore, subject to the conditions in the schedule below, be allowed.

Tamsin Law

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 200116(PL)12 I, 200116(PL)18 D, 200116(PL)19 B, 200116(PL)20 B, 200116(PL)10 C, 200116(PL)13 D, 200116(PL)11 C, 200116(PL)14 B, 200116(PL)15 A, 200116(PL)16, 200116(PL)17 and 200116(PL)01 B.
- 3) No above ground development shall commence until details of electric vehicle charging bays with a vehicle charging point, to be provided in accordance with the Council's standard (Parking Standards SPD) have been submitted and approved in writing by the local planning authority. Such details shall include signs and bay markings indicating that bays will be used for parking of electric vehicles only whilst being charged. Prior to first occupation, the electric charging points and bays shall be installed in accordance with the approved details and shall thereafter be maintained for the life of the development.
- 4) No above ground development shall commence until a schedule of the types, colours and textures of the materials to be used on the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in complete accordance with the approved details.
- 5) No above ground development shall commence until details of the types, colours and textures of the materials to be used in the hard surfacing of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in complete accordance with the approved details and retained for the lifetime of the development.
- 6) The existing trees shown on the approved plans to be retained shall not be damaged or destroyed, uprooted, felled, lopped or topped during the construction period of the development without prior written consent of the local planning authority. Any trees removed without such consent or dying or being seriously damaged or diseased during that period shall be replaced with healthy trees of such size and species as may be submitted to and agreed in writing by the Local Planning Authority. The replacement trees shall the after provided in accordance with a timetable to be submitted to and agreed in writing by the Local Planning Authority and shall thereafter be retained for the life of the development.
- 7) No development or other operations shall take place except in complete accordance with the tree protection and special construction measures identified in the Arboricultural Impact Assessment report and BS5837 Tree survey plan prepared by Land Arb Solutions dated February 2022, with measures to be implemented in accordance with BS5837:2012 Trees in relation to Design, Demolition and Construction.
- 8) No development shall commence (excluding demolition, site clearance and initial ground works) until full details of the soft landscaping scheme for the site have been submitted to and approved in writing by the Local Planning

Authority. The agreed scheme shall be implemented in accordance with the approved details before the end of the first planting season following first occupation of the development. Any trees or shrubs planted in pursuance of this permission including any planting in replacement for which is removed, uprooted, severely damaged, destroyed or dies within a period of five years from the date of planting shall be replaced by trees or shrubs of the same size and species and in the same place.

- 9) The development shall not be occupied/used until details of secure cycle storage facilities have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be provided in accordance with the approved details prior to the first use/occupation of the development and shall thereafter be retained and maintained for no other purpose for the life of the development.
- 10) No development shall commence until a scheme for the removal, storage, site for relocation and scheme for re-installation for the locally listed drinking fountain have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully complied with, and installation completed prior to first use of the development hereby approved.
- 11) Prior to the first occupation of the development, details of the car park height barrier shall be submitted to and agreed in writing by the Local Planning Authority. Such road restraint systems shall be installed in accordance with the approved details and thereafter maintained for the lifetime of the development unless otherwise agreed in writing by the Local Planning Authority.
- 12) No development shall commence (excluding demolition, site clearance and initial ground works) until details of the Highways Works as indicated on drawing 200116(PL)12 I, including, access details, signing, lining, traffic signals, paving, relocation of Highway infrastructure, buildouts , drainage and an independent safety audit have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the agreed Highway Works have been completed in accordance with the approved details.
- 13) The development shall not be occupied until the access into the site, together with parking and turning areas within the site have been laid out in accordance with the approved details. These area(s) shall thereafter be retained and not be used for any other purpose for the life of the development.