



Appeal Decision

Site visit made on 6 March 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th May 2024

Appeal Ref: APP/B3030/W/23/3330745

**Land Adjacent Tesco Express, Kirklington Road, Rainworth,
Nottinghamshire NG21 0AE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr K Nijjar against the decision of Newark and Sherwood District Council.
 - The application Ref is 22/01298/FUL.
 - The development proposed is a retail unit with parking and amended site entrance.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The main parties have had the opportunity to comment on the revised Framework during the course of the appeal.

Background and Main Issue

3. The appeal site comprises a disused area of land formerly part of the car park of the Robin Hood public house on the corner of Southwell Road East and Kirklington Road in the village of Rainworth. The public house underwent a change of use some years ago to become a Tesco Express supermarket, which utilises the other part of the former pub car park for customer parking.
4. The proposal is for a single storey retail unit, the end user indicated to be Heron Foods. Following a series of amendments during the application process, the proposal determined by the Council included separate pedestrian and vehicular accesses for customers from Kirklington Road. Deliveries would use the existing Tesco car park access on Southwell Road East.
5. The application was recommended for approval by planning officers, but following two planning committee meetings, was refused by members on the basis of conflict between pedestrians and vehicles, insufficient car parking spaces and likely increase in pressure for on-street parking.
6. Therefore, having regard to the decision notice and evidence before me, the main issue is whether the proposal would be acceptable with respect to highway and pedestrian safety, having regard to the proposed access, parking and servicing arrangements for the retail unit.

Reasons

Policy Context

7. Spatial Policy 7 of the Amended Core Strategy Development Plan Document (March 2019) sets out that proposals should, among other things, provide safe convenient and attractive accesses for all; be appropriate for the highway network in terms of the volume and nature of traffic generated and ensure that the safety, convenience and free flow of traffic are not adversely affected. Proposals should also provide appropriate and effective parking provision both on and off-site and vehicular servicing arrangements in line with Highways Authority best practice; and ensure that vehicle traffic generated does not create new, or exacerbate existing, on-street parking problems, nor materially increase other traffic problems.
8. Paragraph 114 of the Framework sets out similar expectations in terms of access, parking and mitigation of significant impacts on the transport network.

Access and Servicing

9. The retail unit would be accessed by customers from Kirklington Road, both by car and on foot. I note concerns raised regarding the numbers of schoolchildren using Kirklington Road and the potential for conflict with vehicles. The access arrangement has been the subject of lengthy discussions between the appellant and the local highway authority, with the plans now showing a separate pedestrian path from the footway to the front entrance, with the existing pedestrian refuge retained.
10. Pedestrians approaching from the Southwell Road junction would have to cross the vehicular entrance before reaching the entrance path, but this would be no different to other entrances and crossovers which must be negotiated. The level of traffic into and out of the parking area would not be constant, such that it would impede pedestrians from safely crossing at this point, and I note that Nottinghamshire County Council (NCC) as the local highway authority is satisfied with the technical design of the entrance.
11. In terms of vehicular access, the entrance is on a straight stretch of road with sufficient visibility in either direction. Although interested parties have raised concerns with traffic backing up from the junction, I have no technical evidence to indicate that this is a persistent problem throughout the day or that the location of the proposed access would present a specific danger to road users.
12. Deliveries to the proposed retail unit would take place via the existing loading bay of the Tesco Express supermarket. Goods would be unloaded and wheeled across via a dedicated route between parking spaces. This option has been selected due to the lack of space within the proposed car park for a delivery vehicle to enter, turn around and leave in a forward gear.
13. The concern expressed by the Council is that the proposed arrangement would increase the risk of conflict within the Tesco car park between goods vehicles and pedestrians, due to the need for lorries to pass between the parking spaces and main store entrance, and then to make a reversing manoeuvre between two lines of parked cars to enable exit in a forward gear.
14. I saw on site that the layout of the Tesco car park did not fully reflect that shown on the latest swept path diagram. The disabled parking spaces were at a

different angle and the number and position of spaces differed. Notably, I saw parking occurring in the middle row beyond the marked spaces and also within the loading bay area. This additional 'space' to the middle row is potentially within the tracking path of a delivery vehicle, which would create significant difficulties for drivers to access the loading bay in the large articulated lorries proposed to be used.

15. Even if this issue could be addressed, the tracking diagram shows that the vehicle would at multiple points be exceptionally close to walls and parked cars and would require very precise manoeuvring by drivers. Given the differences between the layout on plan and that which I saw on site, I am unconvinced that the manoeuvring required would be straightforward, even allowing for widening of the access point itself. Rather, the size of vehicles and the need to undertake precise reversing within an area where vehicles and pedestrians are also moving presents a significant risk to other car park users.
16. Moreover, the diagram shows the size of the delivery vehicles would exceed the depth of the loading bay and obstruct access to the disabled parking spaces when unloading is taking place. The vehicles are also shown driving forwards into the loading bay, meaning unloading would occur outside of the bay and potentially in conflict with other car park users.
17. I recognise that the access and delivery arrangements already exist for the Tesco store, and I further understand the store is not subject to specific restrictions on the timing or methods of delivery. However, the proposal would increase the number of deliveries using the car park, and in turn the risk of conflict between large delivery vehicles and other drivers and pedestrians.
18. Notably, with two separate units, there would be a risk of deliveries arriving simultaneously and one vehicle being unable to access the site, leading to the possibility of lorries waiting on Southwell Road East to enter, or parking up and delivering from the roadside. I acknowledge that the expected number of Heron Foods deliveries is indicated to be less than one per day, but I have no information in respect of the timing and frequency of Tesco deliveries to be confident that delivery clashes would not occur.
19. This aside, even an occasional coincident delivery leading to waiting or parking on Southwell Road East would pose a significant impediment to the free flow of traffic, being close to the main signalled intersection with Kirtlington Road and opposite another T-junction with Warsop Lane. Indeed, I note comments within the evidence that on-street parking by delivery vehicles already occurs. Though I cannot confirm the frequency of this, it tallies with my concerns regarding the lack of space within the site for large delivery vehicles to safely manoeuvre.
20. I have considered whether planning conditions could be used to manage deliveries between the two stores. However, the existing Tesco store is not subject to delivery restrictions and it would not be possible to impose conditions on how deliveries are managed to this store. As such, a management plan would be ineffective as it would relate only to the proposed store. The Council has belatedly raised the possibility of a Section 106 agreement being entered into by all parties to secure a management plan. However, no agreement is before me and I have no certainty that one could be produced in a timely manner, or that it would be capable of overcoming the concerns identified above. Therefore, I am not satisfied that planning

conditions would be appropriate in this case to overcome the harm identified to pedestrian and vehicular safety from the proposed servicing arrangements.

Parking Provision

21. The proposal includes the provision of 14 parking spaces, two of which would be disabled spaces. The Council's Highways Design Guide (January 2021) (the HDG) sets ratios for parking provision based on the size of retail units. In this case, the minimum provision would be 24 spaces. The Tesco store is indicated to have the same requirement, based on its size, but only provides 16 spaces. The Council points to the cumulative provision of 30 spaces falling short of the 48 spaces the guidance seeks across both units.
22. The appellant argues that the parking provision reflects the stated needs of the intended occupant of the development and exceeds that of other Heron Foods stores in the Nottinghamshire area, with examples given of stores with 6, 11 and 13 spaces. NCC has not raised objection to the level of parking provision.
23. However, NCC's conclusions appear not to follow the HDG which stipulates that a Transport Assessment or Statement should be provided to justify a lower parking provision. The evidence before me from the appellant is limited, with no details of the site circumstances or parking demand of the other stores to understand if they are comparable to the appeal site.
24. I have noted the points made that customers could avail of either car park and that there would be some linked trips as customers visit both stores. However, there is no evidence before me to indicate the extent to which this would occur, nor evidence generally of expected trip generation that may have justified the number of spaces proposed. This is a particular concern given the extent of the shortfall in provision against the Council's guidance, and the specific constraints of the immediate highway network, with a large, signalled junction, filter lanes, a pedestrian refuge and double yellow lines along stretches of both Southwell Road East and Kirklington Road, where queueing traffic and on-street parking due to a lack of on-site parking could quickly lead to congestion.
25. I note the further concern that a lack of spaces in one car park may lead to drivers exiting and driving through the junction to reach the other, given there would not be an internal connection between them. It is difficult to assess the chances of this occurring, but it is reasonable to consider that it is more likely to occur with fewer parking spaces than required by the HDG.
26. Conversely, other representations raise concern that a through route between the car parks would create a risk of drivers using them as a cut-through to avoid the lights at the junction. However, I have no alternative plans for a unified car park to allow me to judge whether such an arrangement would be safer or riskier and I have limited my considerations to the proposal before me.
27. Overall, I am not satisfied that it has been demonstrated that the level of parking provided would be adequate to ensure that demand would be met and the risk of increased on-street parking pressure would not result.

Conclusions on Main Issue

28. For the reasons set out, I conclude that the proposed access and delivery arrangements, and shortfall in the provision of customer parking, would present an unacceptable risk to highway and pedestrian safety. Planning

conditions would not be sufficient to address the harm identified. The proposal would therefore conflict with the aforementioned requirements of Spatial Policy 7, and those of the Framework.

Other Matters

29. The design of the proposed retail unit has not been opposed by the Council and the development would make use of a longstanding derelict area of land which would improve the appearance of the area. This merits positive weight in the planning balance.
30. There would also be economic benefits, initially in the construction of the development, and thereafter through the creation of new jobs and additional retail activity. Whilst I have noted concerns raised in respect of whether another retail store is needed or wanted by local residents, there is no policy put to me that either resists the development in principle or requires evidence of need to be demonstrated. The store would be located within the built-up area and close to the commercial centre of the village and is therefore suitable in principle for retail development.
31. The Council did not oppose the application in respect of the effects on neighbours' living conditions, trees, ecology, flood risk or drainage. Having considered the evidence before me, I do not find reasons to differ from the Council's conclusions. However, an absence of harm in these respects means they are neutral considerations in the overall planning balance.
32. I have noted other comments made by interested parties in respect of matters not otherwise addressed above, but I have not identified any further material harms or benefits which would be consequential in the overall planning balance.

Conclusion

33. The proposal would accord with the development plan in a number of respects, including the provision of retail and employment within settlements, and in terms of its design. However, on the main issue of highway safety there would be significant harm. This results in conflict with the development plan, taken as a whole. I afford significant weight to this conflict.
34. The identified benefits, given the scale of the development, would attract moderate weight in favour of the proposal. However, the Framework is a further material consideration which indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, which I have found would occur in this case.
35. Therefore, taken together, the material considerations would not be sufficient to outweigh the identified development plan conflict. Consequently, the appeal should be dismissed.

K. Savage

INSPECTOR