
Appeal Decision

Site visit made on 8 October 2015

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 March 2016

Appeal Ref: APP/H0738/W/15/3033734

The Merlin, Marsh House Avenue, Billingham, Cleveland, TS23 3QJ

- 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 Taverns Limited against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 14/2594/FUL, dated 29 September 2014, was refused by notice dated 10 March 2015.
 - The development proposed is the erection of a new building within Class A1 retail together with access, parking, servicing, installation of ATM machine and associated works at The Merlin Public House.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. During the course of the planning application, revised versions of the Planning Statement and Environmental Noise Assessment were received, as well as a Parking Accumulation Survey, with the planning permission refusal including consideration of these submissions. This decision letter has also been prepared taking into account the revised and additional documents.

Main Issues

3. The main issues are;
 - whether the proposal accords with current local and national policies for the location of retail development, and the impact on on-going and planned investment in Billingham Centre;
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposed development would safeguard the living conditions of neighbouring occupiers, having regard to noise and disturbance; and,
 - the effect of the proposal on highway safety.

Reasons

Retail & town centre impact

4. The proposed retail premises would be located approximately 1.6 km north of Billingham District Centre, and would not be within an existing defined town centre. Paragraph 24 of the National Planning Policy Framework (the Framework) advises that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre, and should first consider the availability of suitable sites in town centre locations, then edge-of-centre, before finally considering out-of-centre sites. In considering out-of-centre sites, the Framework advises that sites which are accessible and well connected to the town centre should be given preference. The Council has also referred to Policy CS5(7) of the Stockton-on-Tees Core Strategy Development Plan Document 2010 (the Core Strategy), which advises that the consideration of planning applications for main town centre uses in out-of-centre locations, should be determined in accordance with prevailing national policy on town centres.
5. The proposed development would provide 390 m² floorspace, which is indicated to be the minimum size to allow national multiple retailers to operate a neighbourhood store to meet a local need and catchment of approximately a 10-minute walk, whilst allowing a retailer to open for an unlimited period having regard to the provisions of the Sunday Trading Act 1994.
6. The appellant submitted a Sequential Approach Assessment dated September 2014 with the planning application, which considered the nearest defined neighbourhood centres and, as a consequence of the conclusions of an Inspector on a 2012 appeal for retail development on another site within the Billingham area, sites within or on the edge of Billingham Centre. The appellant has also drawn my attention to excerpts from a Secretary of State decision on an appeal for proposals which included the erection of retail units in Rushden, and which refers to a Supreme Court case in Dundee, where reference was made to the definition of 'suitability' as a term in connection with section 2 of the Framework. In this respect, it advises *that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach*, with the underlying principle being that the proposal should not be altered or reduced so as to fit on to an alternative site.
7. At the time of the assessment, the neighbourhood centres at Tunstall Avenue, Low Grange, and Kenilworth Road were fully occupied and it is reported comprise relatively small units which would not be of sufficient size to accommodate the proposed neighbourhood convenience store. Turning to sites within Billingham Centre, a number of sites were revealed to be available, although the submitted evidence identified that the size of the majority of them would be insufficient for the purposes required. A single unit at No. 76 Upper Queensway was highlighted as being capable of accommodating the proposal, albeit that at 1,626 m², but it was identified as being too large and therefore unsuitable. Further sites on the edge of Billingham Centre were considered and discounted for various reasons, including loss of open space, the absence of retail opportunities, and the continued occupation of sites for community use or for parking. As a consequence, the appellant has concluded that there are no sequentially preferable sites which would be suitable or available.
8. The Council has accepted the conclusions of the sequential test in respect of the availability of sites at the neighbourhood centres at Tunstall Avenue, Low Grange, and Kenilworth Road. However, in respect of Billingham Centre, I note

that an assessment of the availability of units within the centre undertaken in December 2014 and provided on behalf of St. Modwen as the town centre owners, shows far greater vacancy rates and availability than the availability identified by the sequential test, which has been highlighted by the Council in their assessment. Furthermore, the adaptability and flexibility provided by the potential for sub-division of larger units, is indicated as being feasible for floorspace to be provided of an appropriate size to be able to accommodate the size of unit as proposed. In light of the absence of any further update to the sequential test following the Council's submissions, and being mindful of the content of paragraph 24 of the Framework, I would not disagree with the conclusion that the sequential test has failed to consider the issue of flexibility in terms of the potential for the adaptation and sub-division of existing units in Billingham Centre.

9. In further considering the proposal, my attention has been drawn by both the appellant and the Council to saved policy S15 of the Stockton-on-Tees Local Plan: Alteration Number 1 to the Adopted Local Plan 2006 (the Local Plan), which addresses small scale shopping outside retail centres. The preamble to the policy accepts there to often be a need for individual shops in residential areas within convenient walking distance, as a means of serving local demand, and thus reducing the need to travel. It is also held that 'small scale shopping' should reflect the type of provision and scale of development already available within the locality.
10. The appellant's evidence is clear that the intention of the proposed unit is to specifically provide an opportunity for daily top-up convenience shopping to meet the needs of a localised catchment of residents and businesses within approximately a 10-minute walk or 500 metres. However, the evidence placed before me indicates that the proposed unit would be substantially larger than existing units within neighbourhood centres in North Billingham. Whilst I do not dispute that the proposal would have the potential to address a localised need on the basis of the Council's submissions on existing coverage from defined centres within the area, I have been mindful of the conclusion reached by the Inspector on the 2012 appeal decision in relation to saved Policy S15(ii) of the Local Plan, addressing the need for the unit to be of a scale appropriate to the locality. In this instance, the substantial size of the proposed retail unit would not reflect the scale of existing provision in the locality, where existing individual neighbourhood units are indicated to be less than 100m². The proposed unit cannot therefore be regarded as providing 'small scale shopping' in accordance with the terms of the saved policy. As a consequence, the proposal would not accord with saved policy S15 of the Local Plan, and must therefore be assessed against the relevant Development Plan policy, which in this instance is policy CS5 of the Core Strategy, which as set out previously in this Decision Letter, requires determination in accordance with prevailing national policy on town centres.
11. Turning to the second reason for refusal, the Council has expressed concern that the proposed development would result in an adverse impact on the existing Billingham Centre, which has been subject to ongoing improvements to improve viability and create a greater diversity with their convenience offer. Expanding upon the reason, the Council indicated in the officer report that a retail impact assessment in accordance with paragraph 26 of the Framework would be required to demonstrate whether there would be an impact on the

- viability and vitality of existing retail provision, as well as the committed and planned public and private investment in Billingham Centre.
12. In responding, the appellant has referred to paragraph 26 of the Framework as the starting point in establishing whether a Retail Impact Assessment is required, and in particular has drawn my attention to the guidance on when such an assessment would be necessary. Paragraph 26 advises that *local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold, with the caveat that if there is no locally set threshold, the default threshold is 2,500 m².*
 13. The Council has indicated that a 200 m² threshold for requiring a Retail Impact Assessment has been set within the saved Local Plan. Whilst the Council's appeal statement has drawn my attention to the preamble to saved Policy S15 of the Local Plan, the extract as submitted does not refer to the threshold requirement for a Retail Impact Assessment. On the basis of the submitted policies, the reference as quoted would appear to be covered in the preamble to saved policy S2 of the Local Plan. In this respect, I note that the preamble concludes that *some smaller developments can also impact against the vitality and viability of centres depending on the nature of the proposal, and that Retail Impact Assessments may be requested for developments proposing less than 2,500 m² floorspace.*
 14. I have carefully considered the Council's reference to the 200 m² threshold but note that the Local Plan policy significantly pre-dates the Framework, and is drawn from superseded PPS6. Furthermore, on the basis of the text in the preamble, the threshold referred to is stated as being applicable to *extensions to existing retail development and internal alterations*, rather than new stand-alone retail development. In this specific circumstance, the cited threshold would not reasonably be applicable to the proposed scheme, and allowing for a reversion to the default threshold of 2,500 m² for a retail impact assessment set out at paragraph 26 of the Framework, there would be no requirement for the provision of such in this instance.
 15. In the absence of a requirement for a formal assessment of retail impact, I have considered the various submissions regarding the potential for an adverse retail impact on the existing neighbourhood centres and Billingham Centre. In this respect, I have noted in particular the contention regarding the potential for adverse impacts of a national multiple retailer on existing local convenience store provision in neighbourhood centres in North Billingham. However, I am not persuaded on the basis of the detail of evidence submitted that such an impact would undoubtedly occur, or that an erosion of the viability of existing neighbourhood centres would result, and I consider it reasonable to conclude that given the nature of neighbourhood centres that they would continue to benefit from existing local custom. In respect of Billingham Centre, I have noted the submissions regarding the concerns over the impact of the proposed development on on-going and planned investment, and the stated objective to improve the convenience goods offer within Billingham Centre. I accept that the proposed development would be on a main thoroughfare to the town centre, but it would seem evident that despite the appeal proposal that investment in the town centre from national retailers is continuing, with recent investment by Aldi widening the convenience goods offer. I therefore have no compelling evidence to support the contention regarding the retail impact on Billingham Centre.

16. On the basis of the policies of the Development Plan and the Framework, there would not be a requirement for the submission of a retail impact assessment in this instance, and no compelling evidence has been placed before me that the proposals would result in adverse retail impact on either neighbourhood centres or Billingham Centre. However, I have concluded that the submitted sequential test has not considered in any detail the issue of flexibility in terms of the potential for the adaptation and sub-division of existing units in Billingham Centre, and has therefore been failed. As a consequence, the proposals would not accord with Policy CS5(7) of the Core Strategy, which advises that planning applications for main town centre uses in out-of-centre locations should be determined in accordance with prevailing national policy on town centres. Furthermore, there would be conflict with paragraph 24 of the Framework, and therefore in accordance with paragraph 27, an application which fails to satisfy the sequential test should be refused.

Living conditions

17. The site accommodates a large detached two-storey public house, and includes a substantial area of hardstanding surrounding the building which is available for customer parking and servicing. The eastern boundary to the site comprises a mix of mature hedgerow and low-level timber fencing, with residential properties on Sherburn Avenue and Bolam Grove beyond. The closest properties facing directly towards the appeal site are the semi-detached dwellings at Nos. 61 & 63 Sherburn Avenue.
18. The proposed site plan shows that the servicing of the retail unit would occur adjacent to the eastern boundary of the appeal site, with the service yard for the unit also located in this area and indicated to contain air-handling and condenser units. A formalised parking layout would also provide a number of spaces immediately to the rear of the public house. At the time of my visit, whilst the northern section of the existing car park was relatively full, only very limited parking was in evidence in the areas to the rear and south of the public house.
19. The Council has expressed concern that the proposed development would result in an increased use of the car park to the rear of the premises, which would result in increased levels of noise and disturbance at unsociable hours beyond what could be reasonably expected by neighbouring occupiers. On the basis of the evidence before me, the Council has surmised this to be as a consequence of the additional and intensified demand for parking, and the servicing of the retail unit by commercial vehicles as well as the operation of plant within the rear service yard.
20. The appellant submitted an Environmental Noise Assessment with the planning application, which specifically considered the impact of deliveries to the proposed retail unit, as well as the potential for noise from plant associated with its operation. The impact of the additional parking associated with the unit was not addressed. The assessment provided an overview of existing baseline noise levels, with the surveys undertaken in locations near the closest noise sensitive receptors, where it was identified that the predominant existing noise source was passing traffic on Marsh House Avenue, although some existing plant noise from the public house was also audible during quieter night-time periods, as well as distant traffic noise from the north-west. The conclusion indicated that an insignificant level of noise in comparison with

- baseline conditions was predicted during HGV deliveries, and that control could be exerted through the use of planning conditions over noise levels from plant.
21. I have carefully considered the conclusions of the Environmental Noise Assessment and have had regard to the Council's submissions on the same. In respect of the servicing of the retail unit, there is no evidence to suggest that this would be more than a relatively infrequent occurrence during the course of the day, albeit that I accept that the action of manoeuvring any vehicles on site and the unloading and loading of stock trolleys would have the potential to create short periods of disturbance. However, despite the proximity of the nearest dwellings, in the context of the appeal site's existing commercial use and the existing background noise levels during the daytime, I do not consider that any such noise impact would be so significant as to be unacceptable. Furthermore, I note that whilst the appellant has not indicated opening or servicing hours for the unit, the Council has suggested conditions, which with regards to servicing would limit the impact of this activity from quieter times of the day.
 22. In respect of the potential impact of plant noise, I have noted the conclusions within the Environmental Noise Assessment in respect of the rating noise level of the equipment at noise sensitive receptors in comparison with the background noise level, and in particular the correlation between the opening hours of the unit and the operation of air-handling units for the shop floor. I am satisfied that the overall levels of plant noise would not be significant at noise sensitive receptors, and that suitable conditions could be attached to ensure that further mitigation could be added if necessary so that there would not be an adverse impact on the living conditions of neighbouring occupiers in this respect.
 23. Turning to car parking on the site, the location of the proposed retail unit would, in addition to predicted pedestrian customers, be likely to result in an increased demand for the vehicular use of the car park. Furthermore, it would be reasonable to conclude that the duration of visits to the retail unit would be briefer, but that the frequency of visits and associated vehicular movements would be greater, particularly as indicated within the Transport Statement during commuting hours from 'pass-by' traffic. Nevertheless, whilst I accept that as a consequence of the opening hours of the public house that there would be the likelihood of a significantly increased use of the car park within morning hours, given that the predominant background noise source is that of traffic on March House Avenue, I do not consider that the use of the car park in conjunction with the retail unit would result in an unreasonable level of noise and disturbance for neighbouring occupiers.
 24. Interested parties have also raised concern over the potential for light pollution during winter months from vehicles servicing the proposed retail unit, as well as concerns related to the potential for littering and anti-social behaviour. In respect of light pollution, I note that such a relationship between vehicles using the car park and neighbouring properties already exists, and I do not consider that the proposed development would result in an unacceptable worsening of the existing situation. In respect of littering and anti-social behaviour, I have no compelling evidence before me that the operation of a retail premises in this location would result in adverse impacts related to these issues, and do not consider that these would amount to a reasonable basis for withholding consent.

25. I have noted that representations have been made to the effect that Mr Pitt's (the occupier of No. 63 Sherburn Avenue, Billingham) rights under Articles 1 & 8 of the European Convention on Human Rights would be violated if the appeal were allowed. However, as a consequence of my conclusions in respect of the impact of noise and disturbance from the proposals, I do not consider them to be well-founded resulting in an impingement to the right to a private family life under Article 8. In this respect, I am satisfied that an acceptable relationship between the proposed development and No. 63 Sherburn Avenue, Billingham would be attainable and as a result, there would be no violation of Mr Pitt's human rights.
26. On the basis of the submitted evidence, I am satisfied that, subject to the imposition of conditions to ensure appropriate mitigation, that the proposed retail unit would not result in an adverse impact on the living conditions of neighbour occupiers. The proposal would therefore accord with saved policy S15(iii) of the Local Plan as it would not give rise to an adverse effect on the amenity of neighbouring properties. Furthermore, the proposed development would accord with paragraphs 17 and 123 of the Framework in that it would not give rise to significant adverse impacts on health and quality of life, and would continue to secure a good standard of amenity for existing occupants of nearby buildings.

Highway safety

27. The Council's concerns in respect of highway matters relate to the access and manoeuvring arrangements for servicing and delivery vehicles on the appeal site, as well as the potential impact of on-street parking as a consequence of the proposed position of the ATM.
28. The appellant has submitted a Transport Statement which demonstrates that a 10 metre long rigid-bodied vehicle could access the rear part of the appeal site for servicing, with a swept path analysis indicating capacity for the turning of the vehicle on site, allowing both arrival and departure from the site in a forward gear. However, on review of the vehicular swept path and further to the comments of interested parties, it would appear that in order to facilitate the turning of the vehicle on site prior to reversing to the service yard of the proposed retail unit, a limited reliance has been placed upon land beyond the extent of the area of hardstanding, and according to the submitted plan, beyond the boundary of the site. Furthermore, I note that the proposed swept path would be in close proximity to the protected Sycamore identified as Tree T2 by Tree Protection Order (TPO) 844.
29. In this regard, I am mindful that it is possible smaller commercial vehicles than those of a 10 metre length may be used in connection with the servicing of the retail unit. However, on the basis of the submitted information, and having regard to the extent of reverse manoeuvres required within the site in close proximity to parking for the general public, I have reservations over the practical feasibility and desirability of the servicing arrangements in the context of the limited space available within the car park for manoeuvring. There would be the undoubted potential for undesirable conflict with pedestrians and vehicles of customers of both the retail unit and public house during the course of manoeuvring on the site. Furthermore, given the existing physical restrictions on the highway in front of the unit in terms of the location of the central traffic islands and the position of the bus stop, any displacement of

deliveries to this location would result in an adverse impact on traffic flows and highway safety.

30. Turning to the impact of the ATM, its position is shown on the submitted plans before me as being located towards the southern most point of the front elevation of the building, which would place it in a location furthest away from the main body of parking to the north of the public house. Whilst I accept that the ATM is likely to be used in conjunction with purchases made from the retail unit, it is also quite likely that passing motorists on Marsh House Avenue may stop solely to use the ATM. In this respect, given the limited duration of visits solely using the ATM, I share the Council's concern that the distance from the parking combined with the extra time taken to park in the car park could result in more ad hoc parking on Marsh House Avenue in front of the unit, and also in the adjacent school lay-bys. Whilst I have considered the appellant's contention regarding the existence of the bus stop and central traffic islands combined with Traffic Regulation Order markings providing a disincentive for stopping on the road, I am not persuaded that these are factors which would necessarily prevent vehicles from stopping in the immediate proximity of the unit for a short period of time, to the detriment of highway safety.
31. On the basis of the submissions and my observations on the site, the proposed servicing of the retail unit and the position of the ATM would fail to safeguard highway safety. As a consequence the proposed development would not be in accordance with Policy CS3(8) of the Core Strategy, which requires new development to be designed with safety in mind, or paragraph 35 of the Framework which requires development to be designed to create safe and secure layouts which minimise conflicts between traffic and pedestrians.

Character and appearance

32. The proposed retail unit would be positioned in close proximity to the existing public house, and on an essentially rectangular area of land to the south of the existing public house. The public house is comprised of a combination of two-storey and single storey flat roofed elements. Whilst the surrounding area is predominantly residential, a cluster of non-residential uses and buildings are situated in the vicinity of the appeal site, including North Billingham Methodist Church, Allington House Care Centre, as well as Billingham Campus School and Sports Centre.
33. The retail building would not in itself be of an uncharacteristic size in comparison with other non-residential buildings within the vicinity, and I do not consider the detailed design and use of materials to be visually harmful in the context of the area. In respect of design, the Council's principal concern is with regards to the relationship with the adjoining public house, which it considers would be awkward and cramped. However, whilst I accept that the proposed building would be in particularly close proximity to the existing public house, I do not consider that the generally spacious characteristics of Marsh House Avenue at this point would be unacceptably eroded given the maintenance of a reasonable setback from the road frontage as well as the car parking and open space on the northern side of the public house. Furthermore, I would not conclude the relationship with the neighbouring building to be visually obtrusive in design terms, with the overall scale and appearance of the building appearing subservient in the context of the two-storey part of the public house.

34. Despite my conclusions on the design of the retail unit, I nevertheless have significant concerns over the impact of the proposed development on the existing Field Maple identified as Tree T1 by Tree Protection Order (TPO) 844. On the basis of my observations, the tree makes an important visual contribution to the character of the street scene, and occupies a prominent location set forward of the line of existing development. Given the proximity of the proposed building, and in the absence of any evidence to the contrary, I would agree with the Council's conclusion that the proposals would result in an adverse impact on the root protection zone and canopy of the tree, and that the health of the tree would be adversely affected resulting in all likelihood in the trees eventual loss to the detriment of the streetscene. In this respect, I do not consider that the appellant's suggestion regarding the use of a condition to protect the health and amenity of the tree would be an appropriate or reasonable way of mitigating the impact.
35. I am satisfied that the scale and detailed design of the proposed retail building would not in itself result in an unacceptable impact on the character and appearance of the area. However, the proximity of the proposals to the Field Maple protected by TPO 844 would have an undesirable effect on the health of the tree, which would result in an adverse impact on the character and appearance of the streetscene. As a consequence, the proposal would not accord with Policy CS3(8) of the Core Strategy, which seeks to ensure that new development responds positively to natural features including trees. Furthermore, the proposal would not accord with the Framework as it would result in the potential for significant harm to the protected tree from the development which could not be adequately mitigated.

Conclusion

36. The proposed development would utilise previously developed land and would be in a sustainable location with good access to frequent public transport nearby. Furthermore, the proposals would not result in an adverse impact on the living conditions of neighbouring occupiers. However, the proposed development has failed to satisfy the locational requirements concerning retail development, would have a harmful effect on highway safety, and would result in an adverse impact on the character and appearance of the streetscene and area as a consequence of the resultant impact on a protected tree. On this basis, the harm identified would not be significantly and demonstrably outweighed by the development's benefits. Consequently, for the reasons above, and having regard to all matters before me, the appeal should be dismissed.

M Seaton

INSPECTOR