



Appeal Decision

Hearing held on 1 March 2011

Site visit made on 1 March 2011

by **JP Roberts** BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 23 March 2011

Appeal Ref: APP/Y3940/A/10/2142004

Trowbridge Retail Park, 235 Bradley Road, Trowbridge BA14 0RQ

- 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 Standard Life Investments against the decision of Wiltshire Council.
 - The application Ref W/10/00947/FUL, dated 18 March 2010, was refused by notice dated 23 June 2010.
 - The development proposed is an A3/A5 restaurant with drive-through facility.
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Decision

1. I allow the appeal, and grant planning permission for an A3/A5 restaurant with drive-through facility at Trowbridge Retail Park, 235 Bradley Road, Trowbridge BA14 0RQ in accordance with the terms of the application, Ref W/10/00947/FUL, dated 18 March 2010, subject to the conditions listed in the Annex to this Decision.

Main Issues

2. The main issues are:
 - i) the effect of the proposal on the living conditions of nearby residential occupiers with particular regard to smell, noise and disturbance;
 - ii) the effect of the proposal on highway safety and the convenience of nearby residents as a result of the reduction in car parking spaces to serve the Trowbridge Retail Park, and
 - iii) the effect of the proposal on the vitality and viability of Trowbridge town centre.

Reasons

Living conditions

3. The appeal site forms part of a large car park serving the Trowbridge Retail Park, which lies adjacent the Spitfire Retail Park to the north. Further to the north is a smaller retail park comprising two units, occupied by B&Q and Halfords. It is proposed to construct a restaurant/take away, with 16 dedicated car parking spaces and a drive-through lane for motorists to order and collect

meals from their cars. It is intended that the unit be occupied by Kentucky Fried Chicken (KFC).

4. A landscaped strip separates the site from Bradley Road, a main route from Trowbridge to the south. A line of houses lies on the western side of Bradley Road, the nearest, No 146, being about 36m away from the site of the intended building. No 146 has a gable end facing the site, but the houses to the north all face towards the site.
5. It is intended to install filtration and odour suppressing equipment, indicative details of which were submitted with the appeal. The manufacturer's specifications indicate that such equipment can remove about 90% of smoke particulates, and thus there may be some residual escape of odour to the air. I was told in representations from neighbours of severe problems of smell which are alleged to result from the McDonalds restaurant on the adjacent Spitfire Retail Park. On my visit, I noticed a clearly identifiable smell emanating from those premises when walking along the footway outside the houses at 132 and 134 Bradley Road.
6. I do not know what equipment has been installed in that restaurant to deal with odour, or whether it is maintained as it should be. Moreover, the proposal is not for a McDonalds restaurant. I was told at the hearing that KFC typically have 60-70% of the turnover of a McDonalds restaurant and that the volume of sales is much lower. It is therefore not appropriate to compare that restaurant with the one proposed. In this case, the main parties agreed at the Hearing that, if I were to allow the appeal, it would be appropriate not only to require details of fume and odour extraction equipment to be submitted, but that there should also be a requirement for the system to be maintained in accordance with the manufacturer's recommendations. Such a requirement would give the Council the ability to ensure that the system would be in good working order.
7. Under such a regime, and taking into account the distance between the appeal site and the nearest dwellings, it is unlikely that there would be any material harm arising from smell from the proposal. Although the Council complains of a proliferation of restaurant/takeaway uses as a result of the proposal, there is only one other such use in the vicinity, the McDonalds premises some 100m away. At such a distance it is unlikely that there would be any noticeable combined effect from the two premises.
8. The proposal would generate additional car trips to the site, which, using empirical data, might be as many as 110 in the peak lunch hour, and 70 trips per hour during the weekday evening peak (17:00 - 18:00). The evidence base was overly represented by restaurant/takeaways with higher volumes of sales than KFC, and so the number of trips here may be fewer. The appellants also say that up to 65% of trade in such KFC establishments arises from linked trips to the retail park, and thus this may limit the extent of additional trips arising from the proposal.
9. Bradley Road is a very busy road, being one of the main routes into and out of Trowbridge. Nobody could tell me how many vehicles per hour use the road, but from my own observations at various times, it appears to be well used. Even though traffic would be quieter in the evenings, it is likely that the noise from additional movements would make no material difference to that from passing traffic on Bradley Road.

10. There may be some noise from car doors slamming, music played in cars and possibly loud conversations from customers, but much of this would take place at the front of the building, and the structure itself would act as a substantial barrier to sound reaching the façade of nearby dwellings. The intervening gap of Bradley Road between the site and nearby houses would also ensure that such noise would not result in harmful conditions for neighbours.
11. I was told by neighbours of problems associated with anti-social activity in the car parks of the two adjoining retail parks, mainly resulting from "boy-racers", who used the car parks as a kind of race-track, racing from one to another and back. I was told that the situation had improved since measures were put in place to gate off the Trowbridge Retail Park in the evening. The proposal would mean that it would again be open at night, at least until the late evening.
12. However, it would be possible to close off much of the car park whilst still allowing access to the proposed restaurant/takeaway. The Council has suggested that a condition be imposed which would require details to be submitted of how the car park would be managed, and at the Hearing, all parties agreed that it would be beneficial for such a scheme to be subject to monitoring and review. With such a condition in place, I am satisfied that there would be sufficient control to mitigate the effects of anti-social activity. Control of litter would also be subject of this condition, and would be a suitable means of dealing with this. These measures are also supported by the Council's Community Safety Manager and this, together with the absence of objection from the Council's Environmental Health Officer, reinforces my findings.
13. I therefore conclude on this issue that the proposal would not harm the living conditions of nearby residential occupiers or conflict with saved Policy C38 of the West Wiltshire Local Plan, which deals with the protection of living conditions and amenity.

Car parking

14. The proposal would result in a net loss of 66 car parking spaces, albeit that 16 spaces would be provided specifically for customers of the proposed restaurant/takeaway. Whilst it is possible that some of these 16 spaces might be used by other customers of the retail park, as there would be a clear demarcation between the two, I consider it unlikely, although the potential for linked trips would limit the need for additional spaces to serve the restaurant.
15. The Council's parking standards seek a maximum of 381 spaces, whilst 284 would remain for dedicated use of the retail park. The standard is a maximum one, and the advice in Planning Policy Guidance Note 13: *Transport* (PPG13) is that developers should not be required to provide more spaces than they themselves wish, other than in exceptional circumstances, for example where there are significant highway safety issues which cannot be dealt with using other controls.
16. In this case, the number of spaces provided was as proposed by the developer. Even so, the appellants have carried out a survey which shows that there is a significant under-utilisation of the car park on the Trowbridge Retail Park and also of the smaller car park of the Spitfire Retail Park. The survey was carried out in February, and therefore it is unlikely to be representative of the busier times of the year, and it was also carried when there was a

significant vacant unit on the Trowbridge Retail Park, and during the current economic downturn. However, the Spitfire Retail Park was fully occupied at the time of the survey, and even that showed a significant level of under-occupancy (94 spaces available) at the busiest times, and it has 88 fewer spaces than would the Trowbridge Retail Park as a result of the proposed development.

17. At the Hearing I was told by a local resident of an occasion when the car park was full, during an event where prices were discounted at Comet, on the Spitfire Retail Park. However, it is not appropriate to seek a level of car parking space that might only be necessary on rare occasions. The Highway Authority had no objection to the proposal, and I attach weight to this, as it might be expected that the Highway Authority would be in a good position to assess the application of parking standards against the likely use of the site.
18. Moreover, should overspill parking occur on Bradley Road to an extent where it would cause a serious danger or inconvenience, it would be open to the Highway Authority to impose parking controls along the road. I therefore find that the proposal would not result in any material harm to highway safety and the convenience of nearby residents.

Effect on Trowbridge town centre

19. Trowbridge Retail Park is located outside of the town centre, although within the limits of the town itself. As part of the application, the appellants submitted information to show that there were no better located sites available. An updated version of that search was submitted with the appeal. The Council accepted that there were no better located sites available. Whilst the Trowbridge Town Council claimed that the sequential test was not carried out and that there were suitable sites within the town centre, I was not provided with details of these, nor was there any explanation as to the alleged deficiencies of the appellant's search. However, the Local Planning Authority argued that the proposal would divert trade away from the town centre, counter to objectives to regenerate the centre, and would encourage unsustainable travel.
20. PPS4 *Planning for Sustainable Economic Growth* identifies drive-through restaurants as a town centre use. However, it is likely that the scope to provide large sites to accommodate the drive-through element of such facilities, which can be readily accessed by car, is a limiting factor in many town centre locations.
21. The appellants say that the drive-through takeaway part of the proposal is likely to account for about 50% of turnover, and therefore it is a significant element of the proposal. There are a large number of restaurants and takeaways within a short driving time of the appeal site. Many of these are within the town centre, but others are outside it, or in nearby towns. It is likely that the proposal would divert trade away from some of these establishments, but they are so numerous that the effect is likely to be very diffuse. Some of the custom would derive from passing trade, and from those visiting the retail parks or working on nearby employment sites, and may constitute new business, rather than diverted trade.
22. Furthermore, some custom may be in preference to home cooked meals rather than diverting trade from elsewhere. The nearest KFC restaurants are in

Frome and Bath, and it may also be the case that some trade will be diverted away from them. There is a continuing growth in the national expenditure on restaurant and takeaway meals, and the proposal would absorb some of that growth. Taken together it is unlikely that this would have much effect on town centre trade.

23. I recognise the Council's desire to direct new investment to the town centre, and the sustainability benefits that arise from this. However, the appeal proposal is heavily dependent on car-borne trade, and it is located on an existing retail park, which already attracts car-borne custom, and is well positioned to attract passing trade. Whilst the regeneration of the town centre is an important planning objective, there is insufficient evidence to show that the proposal would materially affect its viability or vitality, or conflict with LP Policy SP3 which aims, amongst other things, to protect the vitality and viability of the nearby centres.

Other matters

24. Councillor Morland raised concerns about the loss of landscaping within the car park which would result from the siting of the building and the reconfiguration of the parking layout. The area of the appeal site already benefits from an attractive area of planting on the roadside verge, which would remain and play a part in softening the effect of the new building. However, it is also important to break up the sea of car parking; much of the planting within the car park would be unaffected, and the small areas which would be lost could be adequately compensated for by additional planting, notably along the southern boundary of the site.

Conditions

25. The Council suggested a number of conditions which I have assessed in the light of national guidance and the discussion which took place at the Hearing. Conditions relating to tree protection and landscaping are necessary in the interests of appearance. Conditions relating to refuse storage and lighting are needed in the interests both of character and appearance and the protection of residents' living conditions. A management plan, controls on fume and odour suppression, noise and hours of opening are necessary in the interests of protecting residents' living conditions. I shall also attach a condition to require that the development be carried out in accordance with the approved plan for the avoidance of doubt and in the interests of good planning.
26. For the reasons given above, I conclude that the appeal should be allowed.

JP Roberts

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Roger Daniels, MA, MPhil, MRTPI	Pegasus Planning
Mark Dauncey, BA, MA	Pegasus Planning
Paul Proffitt, MRICS	KFC (UK) Ltd
Gino Casciani, BSc(Hons)	KFC (UK) Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Rosie MacGregor	Wiltshire Council
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INTERESTED PERSONS:

Councillor Francis Morland	Local Member
Mr G Watson	Local resident

DOCUMENTS

Document	1	Letter of notification
Document	2	Copy of Trowbridge Town Council's representations
Document	3	KFC's litter control policy
Document	4	Plan showing Trowbridge Community Area
Document	5	Indicative parking control plan



ANNEX

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 08(0017) C1 Rev D, 08(0017) SO1, 08(0017) PL01 Rev D and 08(0017) X01.
- 3) No development, including clearance of the area, shall commence on site until a scheme for the protection of the landscaped areas to the west and the south of the site during the construction phase has been submitted to and approved in writing by the local planning authority. The agreed measures shall be put in place prior to the commencement of development and shall be retained during the construction period.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 6) The use hereby permitted, including servicing, shall only take place between the hours of 07:30 and 23:00.
- 7) No development shall commence on site until a site management plan has been submitted to and approved in writing by the local planning authority. The plan shall include:
 - a) full details of a scheme to manage the car park to deter anti-social behaviour, and measures to ensure its safe use (to include cars and motorcycles);
 - b) management responsibilities for liaison with the crime prevention working group;
 - c) the provision of CCTV to be linked to the Trowbridge CCTV system;
 - d) arrangements for the gating-off of the parking area outside of business hours;
 - e) measures for the control of litter;
 - f) measures to discourage the congregation of groups not associated with the use of the restaurant, and
 - g) arrangements for the monitoring and review of the agreed scheme.The approved management plan shall be implemented prior to the commencement of the use hereby permitted and shall thereafter be retained, or as subsequently approved as part of a review process.
- 8) Prior to the premises being brought into use, a scheme for the storage of refuse shall be submitted to and approved in writing by the local planning authority. The scheme shall then be carried out in accordance with the



- approved details, prior to the commencement of use, and shall be retained at all times.
- 9) Ventilation and filtration equipment shall be installed to suppress and disperse any fumes and/or smell created from the cooking operations on the premises. Details of the equipment shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. All equipment shall be installed in accordance with the approved details and in full working order prior to the commencement of use, and thereafter the equipment shall be maintained in accordance with the manufacturer's recommendations, details of which shall be submitted as part of the details for approval.
 - 10) Prior to the installation of any external ventilation system a scheme to mitigate noise shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the commencement of the use hereby permitted, and thereafter shall be retained.
 - 11) A lighting scheme shall be submitted to and approved in writing by the local planning authority prior to the commencement of development and shall be so designed as to overcome glare, spillage and intrusion. The scheme shall comply with guidance issued by the Institution of Lighting Engineers. The lighting of the site shall only be carried out in accordance with the approved scheme, prior to the commencement of the use hereby permitted.