

PLANNING COMMITTEE

9 May 2012

Observations and recommendations made since preparation of agenda

Item	Comments
Planning Applications	
6.a	<p>W/11/02689/FUL</p> <p>Since preparation of the Committee report, the following items of correspondence have been received:</p> <p>(A) 10 no individual letters in support of the application making the following observations:</p> <ul style="list-style-type: none">- disappointment that the application is not being recommended for permission- the scheme is superior to that at St Stephens Place which offers little to local residents- the scheme represents what Trowbridge wants with more than 2500 people completing various polls and votes in favour of the scheme- the scheme will be served by excellent public transport facilities- the development will deliver a much needed petrol filling station- is the site being earmarked for the Trowbridge campus?- the development will create many new jobs and encourage trade- provision of enhanced riverside walks and open spaces- new supermarket to rival monopoly of Tesco- provision of flagship cinema- it is essential that the site does not remain derelict for an indefinite period- this application should have been determined some months ago and before the application at St Stephens Place- disheartening lack of officer support and discrepancies and mis-representation in the planning report- clear bias towards political rather than planning decision- highway difficulties overstated in view of site previously employing more than 1000- no objections previously raised to the mixed development on this site- current development plan out of date but other schemes permitted which would have been contrary to this plan eg Shires Gateway- approval of Gateway scheme which 'is actually the fault of the planning committee itself' has contributed to current traffic problems- shallow and ill-thought reason for refusal (3) due to ongoing dialogue with Network Rail- development should be accompanied by conditions which require 50/50 funding with Wiltshire Council to improve whole local highway network, close off Station Approach, install CCTV, sign posting of other town assets and integrate public art throughout site. <p>(B) One letter raising concerns over the current 'sub standard scheme', which would appear to be premature with regard to the traffic situation, of poor design and of potential harmful impact on the development at St Stephens Place; if approved, referral to the Secretary of State would result in delay.</p> <p>(C) A letter on behalf of L&G Property confirming the final exchange of contracts with both Odeon and Premier Inn on the St Stephens Place site and advising of a ground breaking ceremony on 30 April.</p>

(D) A letter on behalf of ASDA Stores Ltd objecting to the application and summarised as follows:

- The current ASDA store has a net sales area of only 2300 sq ms with limited retail floorspace, range of stock, compromised access and service arrangements and with shared Pay and Display carpark
- Since opening of ASDA in 1994, permission has been granted for increase in floorspace at Tesco and new Sainsbury superstore, now 300% and 50% larger respectively; Morrisons will be approx 63% larger
- Viability of ASDA store eroded, and options and plans to expand and modernise (approx 450 sq ms) unlikely to go ahead if application permitted

Planning Policy

- NPPF requires LPAs to recognise town centres as the heart of their communities and that impact assessments should evaluate impact on existing committed and planned public and private investment in a centre and overall town centre vitality and viability

Sequential Test

- Entrance to Morrisons more than 300m walking distance from primary shopping frontage and site should be considered out-of-centre
- Recent permission and development at St Stephens Place confirms that site is 'available, suitable and viable' for purpose of sequential test; test also predicated on proposed size of superstore which is not justified and pays no regard to potential for new smaller stores to be developed
- Morrisons unlikely to generate same number of linked town centre trips as ASDA

Need

- WCS confirms no need for new food store and fact that Morrison's are not in the town does not demonstrate a qualitative deficiency.

Impact

- RTP estimate of ASDA turnover (£34M) excludes comparison goods and assumes store is overtrading by approx £9M; also assumes will only lose 20% of turnover to Morrisons compared with 50% to Tesco. These are incorrect figures and unrealistic assumptions in view of location of ASDA and have been used to give impression that greater impact will be on out-of-centre store.
- Even assuming RTP assumptions correct, development would have 33% impact on ASDA turnover and reduce store to 66% of company average level, plus impact on comparison goods (unestimated). This presents risk to long term viability of store which anchors town centre retail offer.
- Estimates a one third reduction in linked trips to town centre
- Concludes that regeneration benefits and job creation from scheme do not outweigh 'substantial harm to town centre'.

(E) A letter of objection from the Victorian Society

Objection on the grounds of the 'poor quality of the proposed extension and the excessive demolition of other mill buildings'.

(F) A letter dated 4 May on behalf of the applicant commenting on the committee report and its recommendation. In view of the detailed points raised, it is appropriate to report the letter in full:

"In respect of the above application, we write following the recently published committee report in advance of the Western Area committee date on 9th May 2012. Our client is disappointed by the recommendation for refusal and the failure to properly recognise the very significant benefits from the scheme – including in excess of 400 jobs and representing a significant regeneration opportunity for Trowbridge town centre. Therefore our client has written to Members separately.

From a planning perspective, the committee report presents a confusing case; put simply, your

Members will need to decide:

- Do they wish to see the Bowyers site redeveloped in a reasonable timescale?
- Do they wish to see in excess of 400 jobs being created within the next 18 months?
- Would the development result in adverse impacts that would '*significantly and demonstrably*' outweigh the benefits (i.e. the NPPF presumption in favour of sustainable development, which applies in the circumstances of the Innox Riverside application).

We remain of the view that there is a very strong case for planning permission and we are disappointed that your officers disagree.

Our client has taken Leading Counsel advice on your officers' report. Based on this advice, we believe the recommendation is based on a number of serious technical inconsistencies, inaccuracies and factual errors – including within the actual recommended reasons for refusal.

Our primary concerns (but by no means all) are as follows:

- The first recommended reason for refusal is generic and vague, referring to the '*holistic planning of Central Trowbridge*' but does not raise any specific concerns, consequently, it does not follow:

- Article 31(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 that requires local authorities to state '*clearly and precisely their full reasons for the refusal*'
- PINS Circular PINS 01/2009, paragraph 1.4.2 (third bullet point), that requires local planning authorities to ensure that their reasons for refusal are '*clear, precise and comprehensible*'
- DETR Circular 05/2000, paragraph 19, that requires the decision notice to be '*complete, clear and precise, to inform discussions between the parties*'

Consequently, if the application was determined via an appeal there would be risk of costs awarded against the Council because of the wording in CLG Circular 03/2009 (Costs Awards in Appeals and other planning proceedings), paragraph B2, that states that '*All appeals are open to costs awards for failure to comply with the relevant statutory requirements, as set out in Regulations*' and there is a clear failure to follow statutory requirements as set out in the above procedures and guidance.

- Our concerns in the bullet points above also relate to the third recommended reason for refusal, where the concerns over the scheme's failure to '*take advantage of the key relationship with the adjoining railway station*' are plainly unclear, with no clear concerns expressed.

- In its policy analysis, the officers' report appears to award significant weight to the 2004 West Wiltshire District Plan; this is a mistake because the Plan is out of date given the wording of the NPPF because it was not prepared under the Planning & Compulsory Purchase Act 2004 and the Plan does not currently meet needs in full for retail and leisure floorspace (paragraph 23 of the NPPF) and consequently this triggers the presumption in favour of sustainable development in paragraph 14 of the NPPF

- The report also appears to award significant weight throughout to the emerging submission draft Wiltshire Core Strategy – referring to its policies in places being given '*policy status*'; this is a mistake because the Plan has not yet been submitted to the Secretary of State, has not yet been subjected to an independent examination in public and there remains an outstanding objection to the land uses identified for the Bowyers site in the 'Trowbridge Master Plan' (connected with draft Policy 28)

- The report's suggestion in paragraph 4.2 of the amended Spatial Planning Officer's comments that '*Without clear evidence to the contrary, it must be considered that the proposal would have an unacceptable impact on the Shires and the Town Centre*' is directly contrary to the advice provided by the Council's own consultants – GVA; this independent advice concludes in respect of Asda (The Shires) '*we do not consider the levels of cumulative impact predicted are likely to seriously undermine its vitality and viability*' and in respect of the town centre GVA state '*we consider the potential for some additional linked trips and other wider attractions to the town centre of securing a cinema and leisure uses etc... could have a positive effect on the centre*'.

- The report makes much of the potential for the permitted development on St Stephens Place to be implemented, the '*threat to viability*' presented by Innox Riverside and the lack of cumulative leisure impact assessment from the applicant. Firstly, this is contrary to previous comments from the Council that the two schemes are not alternatives and, in any event, the fact that Odeon and Premier Inn have committed to St Stephens Place indicates there is no threat to investment. There is no explicit requirement in the NPPF for a cumulative leisure impact assessment and, in any event, GVA firmly concluded that there is no sound basis to differentiate between the two locations for leisure development.

- In respect of the second recommended reason for refusal and the impact on the local highway network, to suggest in the recommended reason for refusal '*that no measures have been put forward by way of mitigation*' is surprising. Our client's professional team has put forward a number of mitigation measures including committing to prepare a Letter of Undertaking and Memorandum of Understanding to deliver railway station improvements as well as numerous sustainable transport initiatives; these measures must be considered mitigation and would ensure that full advantage of the relationship with the adjoining railway station is taken.

- Additionally, in respect of the second highways reason for refusal, we note that the Head of Service: Sustainable Transport, in his consultation response dated 12th April 2012 recommends refusal on the grounds that '*The proposal would result in a severe adverse impact on the local highway network...*'. The word 'severe' is important, since it relates to paragraph 32 (third bullet point) of the NPPF. But this response is inconsistent with all previous correspondence with the applicant and term 'severe' has not previously been used by officers at the Council in connection with highways impact, and neither is it found in paragraph 5.6 of the PFA conclusions on highways impact. Therefore, it can only be assumed that change in language was simply in response to the publication of the NPPF and in reality the impact is not severe at all.

In combination, we believe that the approach taken by your officers as outlined above has led to an unbalanced committee report and the wrong recommendation. Should Members endorse these recommendations and refuse the application, the advice that we have received is that there are good prospects of success at appeal."

(G) A summary of the above letter dated 4 May and an 'Information Pack' detailing the scheme which it is understood has been circulated directly to all members of the Planning Committee.