



Appeal Decision

Inquiry Held on 22 January 2019

Site visit made on 23 January 2019

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 21st February 2019

Appeal Ref: APP/L3245/W/18/3203094

Land to the North of Wrexham Road, Whitchurch

- 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 Aldi Stores UK Limited against the decision of Shropshire Council.
 - The application Ref 17/01152/FUL, dated 8 March 2017, was refused by notice dated 11 January 2018.
 - The development proposed is erection of a new foodstore (use Class A1), access, substation and associated car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a new foodstore (use Class A1), access, substation and associated car parking and landscaping at Land to the North of Wrexham Road, Whitchurch in accordance with the terms of the application, Ref 17/01152/FUL, dated 8 March 2017, subject to the conditions set out in the Schedule to this decision.

Procedural Matters

2. Prior to the Inquiry, the Council took the decision not to give evidence in support of the reasons for refusal as it considered that there was no evidential basis on which to do so. Accordingly, a Statement of Common Ground sets out that there is no dispute between the main parties on any matter in relation to the appeal. However a number of interested parties have made representations either in writing and/or orally at the Inquiry in support of the Council's reasons for refusal as expressed on its decision notice. I have taken all of these into account in making my decision.
3. Plans have been submitted at various stages of the planning and appeal processes. Guidance is clear that the appeals process should not be used as a mechanism to evolve a scheme and I have taken that into account. Nevertheless, the changes shown on the latest iteration of the plans are minor in nature and do not materially alter the scheme overall. I am satisfied that there would no prejudice to anyone by my accepting the revisions shown to the scheme.
4. Completed planning obligations by way of a Unilateral Undertaking (UU) and an Agreement under Section 106 of the Town and Country Planning Act (S106) have been provided. The obligations provide for public transport provision and a financial contribution towards town centre management.

Main Issues

5. From all that I have read, heard and seen, the main issues are (i) the effects of the proposal on the vitality and viability of Whitchurch town centre including having regard to its location; (ii) its effects on the character and appearance of the area; and (iii) its effects on a non-designated heritage asset.

Reasons

Development plan and background

6. The development plan for the area comprises the Shropshire Core Strategy (2011) (the CS) and the Site Allocations and Management of Development Plan (2015) (the SAMDev).
7. The proposed development would occupy what is currently a modestly-sized green field on the western edge of Chemistry which was once a separate settlement to Whitchurch but has now been absorbed into it as the suburbs have expanded. However, the site lies outside the development boundary and is within the open countryside as defined in the development plan. The site is about 1.6km away (or about a mile) from Whitchurch town centre.

Vitality and viability of Whitchurch town centre

8. Policy CS5 of the CS seeks to control development in the countryside but permits it on appropriate sites which maintain and enhance countryside vitality and character where they improve the sustainability of rural communities by bringing economic and community benefits. This includes small-scale economic development and whilst the types of acceptable development are indicated in the policy wording, it does not provide a closed list that precludes other forms of development. In principle, the proposal does not therefore conflict with CS policy CS5.
9. I have taken into account LIDL's argument in its Objection Statement¹ that the methodology used by the appellant in its Retail Impact Assessment is flawed; particularly in relation to the household surveys and benchmark data that have informed the conclusions on overtrading at the LIDL store. LIDL argues that actual turnover figures are to be preferred over estimated ones. I agree. However, I have not been provided with any of their figures and whilst they may have been provided to the Council confidentially, I must make my decision based on the evidence before me. I do not give any weight to this aspect of LIDL's case.
10. The Homebase store at the out-of-centre Waymills site has closed and is now occupied by B&M. LIDL argues that this will further take away trade from the town centre given the similar offer of B&M and the town centre located Home Bargains store and should therefore be assessed cumulatively alongside the appeal proposal. However, I have not been presented with any evidence that the B&M store is having an adverse impact on the town centre retail environment or clear detail of any interrelationship between the appeal site and that now occupied by B&M. I cannot therefore draw any meaningful conclusions from this set of circumstances.

¹ By Plan A, dated August 2018

11. In terms of linked trips, in my view, those choosing to shop at the proposed ALDI store would still be likely to make onward trips into the town centre to purchase other types of goods to those offered by ALDI. They would also use the various other facilities such as banks, public houses and cafés. Indeed, there are many town centre businesses that have completely different offers to a store such as ALDI and I see no reason why it would divert shoppers away from using those other businesses. Notwithstanding this, the appellant has proposed an enhanced bus service to provide a direct link from the proposed store into the town centre. It also strikes me that much of Whitchurch's residential area is geographically more conveniently located to the town centre than to the area around the appeal site. I am therefore satisfied that there will not be significant adverse effects from a reduction in linked trips.
12. The appellant's Retail Impact Assessment² concludes that the town centre convenience offer will continue to trade above benchmark levels if the proposed development goes ahead. The conclusions reached are based on two household surveys, which although undertaken separately from one another, show very similar results.
13. LIDL was not represented at the Inquiry and I have not therefore had the benefit of testing its evidence through questioning. I was, however able to question the appellant and consider that the household survey data and benchmark trading figures provide the only robustly tested substantive body of evidence on this topic as part of the submitted Retail Impact Assessment. I have no compelling reason to conclude that the Retail Impact Assessment does not accord with SAMDev policy MD10b which seeks to ensure development does not cause significant adverse impacts on the vitality and vibrancy of town centres.
14. I have nevertheless, taken into account LIDL's concerns about its Whitchurch store being vulnerable to competition. However, the matter for me to determine in this appeal is not whether the LIDL store would be caused to cease trading, but whether the proposed ALDI store would result in a significant adverse impact on the vitality and viability of the town centre as a whole. Clearly, that judgement involves consideration of what may or may not happen to the LIDL store.
15. On the basis of the available evidence, there is no compelling reason for me to conclude that even in the event that the LIDL store saw a downturn in business and ceased trading in Whitchurch that this would result in a **significant** adverse impact on the vitality and viability of the town centre. That is the test in the National Planning Policy Framework (the Framework) to be applied in my determination of the appeal and which is also clearly set out in SAMDev policy MD10b. There is no conflict with either.
16. I turn now to the matter of the sequential test. Interested parties have suggested that there are other suitable sites within the town centre that could accommodate the proposed store. Paragraph 86 of the Framework says that main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be fully explored.

² Core Document 5.2

17. However, at the Inquiry the appellant provided convincing evidence as to why the other sites put forward by interested parties are not suitable. In particular, the Woodyard site is considered by the appellant to be too small and the Waymills and Heath Road sites are, in any case, out of the town centre. Of the other suggested sites, I have no clear evidence that they are available. No substantive evidence has been provided to challenge the appellant's evidence and I have no reason to disagree that the sequential test is passed.
18. This view is not altered by LIDL's assertion that should its store in the town centre cease trading, the resultant vacant site will be available for retail use regardless of ownership and thus the sequential test cannot be passed. A sequential test cannot reasonably be carried out on the basis of some future and as yet unknown situation.
19. I now turn to the appeal site's location. Amongst other things, policy CS6 of the CS requires proposals which would generate significant levels of traffic to be located in accessible locations in order to reduce reliance on the car and to maximise the opportunities for walking, cycling and public transport use. Whilst the appeal site is located away from the town centre, the distance would not prohibit reasonably fit, able bodied people from walking and cycling would also be an option. I accept that this would not allow for a large weekly shop due to the need to carry bags of provisions. However, it would allow the store's employees to travel to work by means other than the car. Moreover, there is a bus service that would be enhanced as part of the appeal scheme including new stops next to the site that would provide adequate provision for shopping trips to be made by this mode of transport. Overall, I am satisfied that the site would be in a sustainable location in this respect.
20. Taking all of the above into account, the proposal would accord with the development plan strategy for the location of retail development set against a background of the wider spatial plan within which Whitchurch is set to grow. There is no conflict with CS policies CS5 and CS6 or with SAMDev policy MD10b in respect of this first main issue.

Character and appearance

21. Whilst the area within Chemistry is predominantly residential, there has recently been a commercial 'transport services' type development opposite the site next to the junction of the B5398 Wrexham Road and the A41 Whitchurch Bypass. This is a substantial development in the countryside.
22. The site is bounded by the above two main routes on its southern and western edges and by the Llangollen Branch of the Shropshire Union Canal on its northern edge. Immediately to the east is a smaller field which would remain open thereby maintaining a green area between the proposed development and the westernmost edge of Chemistry. Apart from along the edge of the canal, there are mature trees and hedgerows around the site's boundaries. From the canal corridor, the site provides a rural setting to the residential area. From within the site, there are views across the rolling landscape to the north. The site has a rural appearance and it reads as part of the wider pastoral scene.
23. Having said that, the surrounding roads, services and houses are urbanising features within the local environment and from the evidence put to me it is this that has led to the appellant's assertion that the site lies within a semi-rural location. At my site visit, I was able to walk along the canal towpath from the

west towards the site and it was clear that for much of this route, because of the landform and intervening vegetation, the proposed development would not be seen. There would be no clear harm arising from the proposal in these views.

24. However, once the viewer has passed under the bypass, the site comes into to open view. Even where dwellings along the edge of Chemistry can be seen, these views are filtered by mature trees and hedgerows. The evidence tells me that the canal towpath is well used and I have no reason to take an alternative view given that it leads directly into the residential area via the Whitchurch Arm of the navigation. There is a boat turning area next to the site and a marina a short distance to the west. The proposed development would therefore occupy a prominent tourist location along this part of the canal's route.
25. Consequently, the proposed store and its associated car parking and other ancillary areas would result in a significant change to this currently open and rural site. In the context I have just described, this would appear as a substantial urban development in the open countryside.
26. I acknowledge that new planting is proposed to take place between the store and the canal. Over time this would provide a good level of screening. However, it would take time to establish and in the intervening period there would be clear visual harm in views from the towpath. Even following establishment, the sense of a large development would remain.
27. From the Public Right of Way (PRoW) some distance to the north of the site which follows a route along higher land, the new store would also be seen as an isolated large development. However, given the distance between the available viewpoints from the PRoW and the appeal site, the proposed planting would ensure that there would be no long-term visual harm in these views.
28. To conclude on this second main issue, the proposal would conflict with the specific requirement of CS policy CS6 for development to protect, restore, conserve and enhance the natural, built and historic environment, taking into account the local context and character. Having said that, the harm would be localised and would affect only a limited number of views. In my view, the harm to the area's character and appearance would be limited.

Non-designated heritage asset

29. The parties agree that the Llangollen Branch of the Shropshire Union Canal is a non-designated heritage asset. Whilst the proposal will not have a direct impact on it, I have considered the effects on its setting in light of local and national policy.
30. The canal in this part of Shropshire takes a meandering course through the countryside. As it approaches Chemistry from the south west it passes under the A525 and the A41. It then takes a sharp turn away from the edge of the settlement to head west before then heading north. The Whitchurch Arm of the canal branches off at this point and heads into the residential area. The Whitchurch Arm is partly open to boating traffic but is stopped up further along its length where it is subsumed into the Whitchurch Waterways Country Park.
31. The overall experience of travelling along the main canal and its towpath is one of being in a rural environment. Whilst some development can be seen in

Chemistry from the canal, it is mostly well-screened by existing mature vegetation and the canal's overall rural setting in this area is maintained. The appeal site makes a positive contribution to the overall setting of the canal by maintaining the character of a rural landscape between this non-designated heritage asset and the edge of the residential area.

32. I accept that the environment around this stretch of the canal has changed over time with the expansion of built development to the west of Whitchurch and from the urbanisation resulting from the major road corridors and the service area next to the A41/Wrexham Road junction. Indeed, where the site can be seen from the road – from a short stretch of the A41 that bridges the canal – it is experienced in this more urbanised context. I also acknowledge that the canal will pass through a varied range of environments along its whole length.
33. However, none of this takes away from the fact that a very significant stretch of the canal in this area lies within a rural environment. The proposed development would diminish the contribution that the site makes to the setting of a modest stretch of the canal.
34. Paragraph 197 of the National Planning Policy Framework says that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
35. For the above reasons, I conclude that there would be harm to the setting of the non-designated heritage asset thus running counter to policy CS17 of the CS which amongst other things, seeks to protect Shropshire's historic environment. It would also conflict with the heritage protection objective of CS policy CS6. However, the effects would be localised and would reduce over time as the proposed planting matures. The harm to the setting of the non-designated heritage asset would therefore be limited.
36. SAMDev policy MD13 seeks to ensure that wherever possible, proposals avoid harm or loss of significance to designated or non-designated heritage assets, including their settings. However, the policy also indicates that a proposal will be permitted if it can be demonstrated that public benefits outweigh the adverse effects. I return to this matter later on in my decision.

Planning obligations

37. The appellant has submitted an executed Agreement and UU which include obligations to come into effect in the event that planning permission is granted. I have considered the obligations in light of the Framework, PPG and the Community Infrastructure Levy Regulations (the CIL Regulations).
38. Firstly, the UU would provide for an enhanced bus service that passes the appeal site on Mondays to Saturdays and new bus stops to be erected outside the development in order to encourage linked trips between the proposed foodstore and the town centre and the use of public transport to access the development more generally. Secondly, the Agreement would provide a contribution of £10,000 towards Town centre management measures.

39. The Council has provided a CIL Compliance Statement which sets out that the contributions sought would accord with the requirements of a number of CS and SAMDev policies along with the Shropshire Local Transport Plan Provisional LTP Strategy and the Place Plan for Whitchurch. I am satisfied on the basis of the evidence that none of the contributions sought would be prohibited by the pooling restrictions in CIL Regulation 123 and that the provisions of these obligations are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. Thus, they meet the Framework paragraph 56 tests and accord with CIL Regulation 122. Accordingly, I have taken them into account in reaching my decision.

Other material considerations

40. The harms to the character and appearance of the area and the significance of the non-designated heritage asset are limited in each case. Accordingly, the identified conflict with the development plan is limited on both of those matters. Notwithstanding this, there are other important factors to take into account; namely the provisions I have already set out in relation to SAMDev policy MD13 and the balanced judgement required by the Framework as to the level of harm and significance of the heritage asset.
41. I therefore now turn to the benefits of the scheme. There would be short-term construction jobs that would add to the vibrancy of the local economy as the various tradesmen would be likely to use local business during the construction period. Once the store had become operational, it would provide 40 new jobs (15 full-time, 25 part-time). There would also be jobs created beyond the store itself from an increase to ALDI's staff across the wider business as it grows. These are benefits that attract very substantial weight.
42. The proposed speed reduction measures along Wrexham Road would provide a social benefit to the local community by helping to reduce vehicle speeds close to the residential area. These benefits carry significant weight in favour of the appeal scheme.
43. On the environmental side, the provision of new tree and shrub planting could result in some biodiversity improvements. However, this must be seen in the context of the loss of a predominantly green site and I do not consider the benefits from new planting attract anything more than limited weight.
44. The proposed store would generate just over half its energy from the use of solar panels. However, this would be a product of the development itself rather than generating a benefit and is therefore a neutral factor.
45. On balance, I consider the benefits to be sufficient to outweigh the identified limited harms to the character and appearance of the area and to the significance of the heritage asset. Thus the proposal would accord with SAMDev policy MD13 and the Framework.
46. Highways concerns have also been raised by interested parties. However, there is no substantive evidence to contradict the stance taken by the Council, in its Highway Authority role, that there would be no adverse highways effects. Such unsubstantiated and somewhat generalised concerns, and the other matters raised that are relevant to planning, do not lead me to a different overall conclusion that the proposal is acceptable.

Conditions

47. A number of conditions suggested by the Council were discussed at the Inquiry. I have considered these in light of the Framework and PPG. Where necessary, I have amended some of the suggested wordings for clarity, to ensure compliance with national policy and guidance and in light of the discussions between the main parties at the Inquiry.
48. I have specified the approved drawings as this provides certainty (2). A materials condition is necessary in order to ensure the appearance of the development is satisfactory (3). A condition related to a Construction Method Statement is imposed in the interests of amenity and highway safety (4). In the interests of the character and appearance of the site and the area it is necessary to ensure the proper implementation of the landscape scheme detailed in approved Landscape Plan drawing V1303-L101C (5). Conditions relating to the submission of an Arboricultural Method Statement and tree protection are necessary to ensure the long-term viability of existing trees (6 and 7).
49. In the interests of flood prevention, I have imposed a drainage condition (8). Conditions related to highway alterations and site access and internal vehicle circulation and parking are necessary in the interests of highway safety and adequate vehicle parking and circulation (9 and 10). In the interests of promoting sustainable transport, I have imposed a condition relating to electric car charging (11), a Travel Plan (17) and signage (18). Conditions relating to a canal buffer zone are necessary to protect the watercourse and its associated wildlife during and after construction (12 and 13).
50. A condition relating to bat and bird boxes is necessary in order to provide a satisfactory environment for those animals (14). A lighting condition is necessary in order to protect bats (15). A condition restricting opening hours is imposed in the interests of amenity (16).

Conclusion

51. For the above reasons, the proposal accords with the development plan and Framework as a whole and the appeal succeeds.

Hayden Baugh-Jones

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Reid

Kings Chambers. Instructed by
Miranda Garrard on behalf of
the Director of Legal and
Democratic Services,
Shropshire Council

No witnesses were called although the Council's relevant officers were made available to answer questions

FOR THE APPELLANT:

A Crean QC

Kings Chambers. Instructed by
Jones Lang LaSalle

He called

Carl Taylor BA(Hons) DipLA CMLI

TPM Landscape

Paul Crisp MA BSc(Hons) DipTP MRTPI
IHBC

Jones Lang LaSalle

Iain Miller BSc(Hons) PGDip CMILT
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Cameron Rose Associates

Joanna Gabrilatsou BA(Hons) MTPL
MRTPI

Jones Lang LaSalle

INTERESTED PARTIES:

Councillor Beverley Duffy

Whitchurch Town Council

Simon Lyon

Representing High Street
businesses

Tony Shorter

Local resident

DOCUMENTS

ID01 Agreed list of planning conditions

ID02 Draft planning obligation

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No 1303NES-99; Existing Site Plan Drawing No 1303NES-100E; Proposed Site Plan Drawing No 1303NES-101S; Proposed General Arrangements Plan Drawing No 1303NES-102B; Proposed Elevations Drawing No 1303NES-103H; Proposed Roof Plan Drawing No 1303NES-104B; Proposed Roller Shutter Details Drawing No 1303NES-105A; Proposed Boundary Treatments Drawing No 1303NES-106D; Proposed Substation Drawing No 1303NES-108; Landscape Plan Drawing No V1303-L101C; Site Access Arrangement – Right Turn Lane Facility Drawing No 344-01/GA-02 Rev E; Site Access Arrangement Visibility Splays @ 30mph and 40mph Drawing No 344-01/GA-03 Rev A; Site Access Arrangement Footway Maintenance Right Turn Facility Drawing No 344-01/GA-04; Track Plot Analysis 16.5m Articulated Vehicle Entry and Exit Manoeuvre Drawing No 34-01/ATR-01 Rev B; Track Plot Analysis 16.5m Articulated Vehicle Through Extended Splitter Island Drawing No 344-01/ATR-02.
- 3) No development shall take place above slab floor level until samples of all external facing materials have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved sample details.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from construction works;
 - viii) delivery and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 5) All planting, seeding or turfing comprised in Landscape Plan drawing No V1303-L101C 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.

- 6) No site clearance, preparatory work or development shall take place until an Arboricultural Method Statement in accordance with paragraph 6.1 of BS 5837: Trees in relation to design, demolition and construction – Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved Arboricultural Method Statement.
- 7) No construction within the tree protection areas of trees T1276-B1 and T1278 as shown on drawing no ARB/3454/Y/200 by ACS Consulting shall take place until details of a no-dig tree root protection system have been submitted to and approved in writing by the local planning authority. The submitted details shall include details of materials and surface water disposal. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until drainage details including drainage plans and drainage calculations have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) Prior to the development hereby permitted being brought into use, the highway alterations along Wrexham Road, site access and bus stops as shown on drawing no 344-01/GA02_RevE shall be constructed in accordance with full engineering details that shall have first been submitted to and approved in writing by the local planning authority.
- 10) Prior to the development hereby permitted being brought into use, the internal access road, parking spaces and HGV turning area shall be surfaced and marked out in accordance with the details on drawing no 1303NES-101S and shall thereafter be kept available for those uses.
- 11) Prior to the development hereby permitted being brought into use, electric car charging points shall be installed in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.
- 12) No development shall take place including ground works and vegetation clearance until a 5m canal buffer zone has been secured with fencing, the type of which shall have first been submitted to and approved in writing by the local planning authority. The fencing shall be erected in a position denoted by the green line on drawing no. 1303NES-114 and shall be retained throughout the construction period for the development. No access, works or storage of materials shall occur within the buffer zone during the construction period for the development with the exception of carrying out landscape works provided for by condition 5.
- 13) Once the development hereby permitted is open to the public, no access, works or storage of materials shall occur within the 8m canal buffer zone shown on drawing nos V1303 L101C and 1303NES-101S with the exception of carrying out landscape works provided for by condition 5 or landscape management.
- 14) Prior to the development hereby permitted being brought into use, bird and bat boxes shall be erected in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. The submitted details shall provide for:

- i) a minimum of 2 external bat boxes or integrated bat bricks suitable for nursery or summer roosting for small crevice dwelling bat species;
 - ii) a minimum of 4 artificial nests of external boxes or integrated bricks suitable for swifts and/or starlings
- 15) Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the local planning authority. The lighting shall be designed in accordance with the Bat Conservation Trust and Institute of Lighting Professionals Guidance Note 08/18 *Bats and artificial lighting in the UK* or any document that replaces it. Development shall be carried out in accordance with the approved details and the lighting shall thereafter be retained.
- 16) The development hereby permitted shall only be open to customers between the following hours:
 - 0800-2200 Mondays-Saturdays.
 - 1000-1800 on Sundays (with trading limited to a 6 hour period).
 - 0800-2000 on public holidays.
- 17) Within 3 months of the development first opening to the public, a Travel Plan shall be submitted to and approved in writing by the local planning authority. The approved Travel Plan shall be implemented within 6 months of the development first opening to the public and shall remain in force for the lifetime of the development.
- 18) Prior to the development hereby permitted being brought into use, directional signage and information panels shall be erected in accordance with details of locations and design that shall have first been submitted to and approved in writing by the local planning authority. The approved signage and information panels shall thereafter be retained.