
Appeal Decision

Hearing held on 9 September 2014

Site visit made on 9 September 2014

by Mark Dakeyne DipTP MRTPI

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

Decision date: 25 September 2014

Appeal Ref: APP/L3245/A/14/2213935

Land at Hereford Road, Shrewsbury SY3 7RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Morbaine Limited against the decision of Shropshire Council.
 - The application Ref 12/02498/OUT, dated 8 June 2012, was refused by notice dated 19 August 2013.
 - The development proposed is a Class A1 foodstore with associated parking and servicing facilities and a Class B2 workshop with associated parking facilities.
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Decision

1. The appeal is allowed and outline planning permission is granted for a Class A1 foodstore with associated parking and servicing facilities and a Class B2 workshop with associated parking facilities at land at Hereford Road, Shrewsbury SY3 7RE in accordance with the terms of the application, Ref 12/02498/OUT, dated 8 June 2012, subject to the conditions set out in the attached schedule.

Application for costs

2. At the Hearing an application for costs was made by Morbaine Limited against Shropshire Council. This application is the subject of a separate decision.

Procedural Matter

3. The application was submitted in outline, with only means of vehicular access to be determined at this stage. All other matters are reserved for future consideration. The proposed site layout plan Drawing No 6428/23 Revision C is for illustrative purposes only. I have determined the appeal on this basis.

Main Issues

4. The main issues are:
 - (1) Whether the proposal would have a significant adverse impact on investment in Shrewsbury Town Centre or other centres in the catchment or the vitality and viability of the town centre or other centres;
 - (2) The effect on the supply of employment land and premises, having particular regard to the needs of the existing businesses on the site; and,
 - (3) Whether the proposals would lead to a safe and suitable access to the site for all users, including motorists, pedestrians and cyclists, and would have an acceptable impact on the nearby highway network.

Reasons

Shopping

Sequential Test

5. The proposed foodstore is a main town centre use as defined by the National Planning Policy Framework (the Framework). Paragraph 24 of the Framework requires that a sequential test should be applied to planning applications for main town centre uses that are not proposed in an existing centre and are not in accordance with an up-to-date Local Plan. The appeal site is in an out-of-centre location and is not within an area allocated or intended to be allocated for town centre uses in any local plan. It is necessary to consider whether there are any sequentially preferable sites which could accommodate the foodstore.
6. The sequential assessment carried out by the appellant does not identify any town centre sites that are suitable for the development. The Council does not refer to concerns about the sequential test in its reason for refusal. Of those sites discussed at the hearing, the Riverside development is primarily for comparison shopping to boost the offer available in the town centre. The existing planning permission does not appear to provide for a foodstore and certainly not one of comparable size to that proposed (about 2000 sq m gross internal floorspace). Although concerns were expressed that the Riverside scheme has stalled, no evidence was provided at the hearing that there was an intention to redesign the scheme to incorporate a foodstore. The West End Regeneration Scheme is some way off coming to fruition and is intended to provide for a mix of town centre uses. Neither of these larger town centre sites is available for the foodstore.
7. There are a number of smaller sites in the town centre, some of which were referred to in the appellant's sequential assessment. Although some of the sites would be capable of accommodating a small convenience store, they would not be suitable for a larger foodstore. A larger town centre site, the former Telephone House site in Smithfield Road, is intended for a hotel. Permissions exist for a food hall and foodstore extension at the Meole Brace Retail Park, to the south of the appeal site. There is also permission for a foodstore within the South Shrewsbury sustainable urban extension (SUE) to the south-east. Both Meole Brace and the SUE are referred to in Policy CS2 of the Council's Core Strategy¹ (CS) as areas for development but are not defined as town centres or allocated for town centre uses by Policy CS15. Therefore, they are out-of-centre locations and are not sequentially preferable to the appeal site.
8. The appeal site is on bus routes linking to the town centre. The development would be capable of being accessed by foot and bicycle with links to the cycle and footpath network by Rea Brook. The site is close to the residential suburbs of Meole Brace and Belle Vue. The site is relatively accessible and has reasonable connections with the town centre. The proposed foodstore satisfies the sequential test.

¹ Shropshire Local Development Framework: Adopted Core Strategy March 2011

Impact on Investment

9. In terms of Shrewsbury Town Centre, there is no evidence that the proposal would impact on the planned investment at Riverside or West End. As these town centre schemes are primarily for comparison shopping or other non-convenience town centre uses and in the case of the former for some 40000 sq m of floorspace, there does not seem to be any likelihood that a foodstore of the size proposed would have a significant bearing on investment decisions. I have not been made aware of any objections from the promoters of these schemes to the appeal proposal.
10. As discussed above Meole Brace and the South Shrewsbury SUE are not town centres. In any event no evidence was put forward that committed schemes for convenience shopping would be affected by the appeal proposal.
11. There are a number of 'local centres' in the South Shrewsbury area, anchored by Cooperative (Coop) Foodstores. There was discussion at the hearing as to whether these centres fall within the definition of town centres in the Framework. Although these areas are not defined as centres by Policy CS15 or draft Policy MD10 of the emerging Development Management Policies Document (SAMDev)², they play an important role in providing accessible shopping and other services for large residential areas, particularly for those who do not have access to private transport. The centres at Radbrook Green and Mytton Oak have larger Coop stores and a range of other shops and services. I would describe them as local centres rather than small parades of shops of purely neighbourhood significance. Sutton Farm has a number of shops and services but a smaller Coop store so is more on the margins but would be best described as a local centre.
12. The Coop indicate that they have invested in the above centres recently although no specific examples were given. No information was provided about committed or planned investment in the local centres. Whilst acknowledging the general point that a fall in trade might make future investment in refurbishing the centres less likely, such concerns do not amount to the evidence to demonstrate a significant adverse impact on committed or planned investment.

Vitality and Viability

13. There is limited convenience offer in Shrewsbury Town Centre. The level of trade diversion impacts from the appeal proposal on its own and in combination with the Meole Brace and SUE schemes on the Marks and Spencer Food Hall, the Little Waitrose and the town centre Coop would not be significant. Even if the trade draw from the town centre is somewhat greater than estimated, the impact would not be significant given the scale and type of convenience offer in the town centre. The foodstore would include a comparison goods component but, as explained at the hearing, the floorspace of the store and that dedicated to comparison goods would effectively limit this mainly to items perceived as convenience such as pet food, baby products and toiletries.
14. Most of the trade diversion would come from other out-of-centre foodstores particularly Sainsbury's at Meole Brace and Asda at Old Potts Way on the south side of the town. Both stores are estimated to be over-trading. Other

² SAMDev Draft Development Management Policies Consultation Document 31 October 2013

competing out-of-centre stores (Tesco Extra and Morrisons) to the north of the town would be affected to a lesser extent. As these stores are not within town centres, any impact is not of concern.

15. With regard to the Coop local centre stores on the south side of Shrewsbury, based on what I saw and from my own experience I would describe these as local convenience shops catering primarily for top-up shopping. Some customers, particularly those unable to easily access the larger foodstores, would rely on the stores for their weekly shop. But, as demonstrated by the appellant's figures³, this would not be their main role.
16. There would be some diversion of trade from these shops as a result of the proposal. However, the local centres appeared to be performing well from what I observed. The main top-shop function would not be significantly affected. Customers would continue to carry out linked trips combining shopping to the stores with visits to services such as post office, surgery, vets, primary school, day nursery and pharmacy all of which are represented in at least one of the centres. In addition, like other convenience stores, they would benefit from some projected expenditure growth in future years.
17. The Coop considers that the impact on the Coop stores in south Shrewsbury would be greater than the figures provided by the appellant. For example, the Coop state trade diversion for the Radbrook Green store as nearer 25% as a result of the implementation of committed and proposed foodstores in the south Shrewsbury, including the appeal scheme, compared to the appellant's figure of 15%. It was stated that the stores are of a size that falls between the larger foodstore and smaller convenience outlets so costs per square metre are relatively high. They are not over-trading. However, the Coop's impact figure does not appear to be derived from empirical evidence rather it is drawn primarily from experience of impact on a Coop in Gloucester from a new foodstore. However, there is insufficient evidence before me on the circumstances affecting the Gloucester case such as the extent of existing stores already in the catchment. The appellant's figures, based on analysis of the shopping survey carried out on behalf of the Council for its retail study, is more robust evidence.
18. I have taken into account the concerns about some of the inputs into the retail impact assessment such as expenditure growth rates, the extent of the Primary Catchment Area (PCA), future expenditure capacity, Coop store size and turnover and cumulative impact but these have been largely addressed by the submission of further information⁴. In particular, lower expenditure growth rates forecast within the Experian Briefing Note of October 2013 would be offset by the strong performance of existing stores. The PCA was based on the results of the household surveys carried out on behalf of the Council for its retail study. It seems appropriate to exclude north Shrewsbury from the PCA given foodstore provision in this area whilst accepting that some trade would come from outside the PCA. The allowance of 15% appears to be reasonable. Turnover figures for the Coop stores were not provided to the appellant. Moreover, no alternative assessment or figures based on rigorous analysis have been put forward.

³ See Table 1 in NLP Briefing Note dated 6 June 2014

⁴ Briefing Note dated 6 June 2014

19. I recognise that the local centres, anchored by the Coop stores, provide an important service to residents of south Shrewsbury and potentially reduce reliance on the car. However, based on what is before me, the vitality and viability of these centres would not be significantly affected. The corner shop in Meole Village provides a different service to that which would be provided by the proposed foodstore and the impact is not likely to be significant.

Conclusions on the issue

20. In conclusion the proposal would not have a significant adverse impact on investment in Shrewsbury Town Centre or other centres in the catchment or the vitality and viability of the town centre or other centres. There would be no conflict with Policies CS2 and CS15 as the proposal would fit with Shrewsbury's role as the primary retail centre for Shropshire, would not detract from the vitality and viability of Shrewsbury Town Centre and has been accompanied by sequential and impact assessments. Emerging Policy MD10 has limited weight as there are unresolved objections to it but the proposal meets the criteria relating to retail impact subject to the imposition of a condition relating to the proportion of comparison goods. The proposal would satisfy the tests set out in paragraphs 26 and 27 of the Framework and increase local consumer choice.

Employment Land and Premises

Policy Position

21. The appeal site is not allocated or protected as employment land by Policies CS13, CS14 or draft Policy MD4 of the emerging SAMDev. Policy CS13 is over-arching in, amongst other things, placing emphasis on planning and managing a responsive and flexible supply of employment land and premises. It does not include site specific designations. Policy CS14 refers to a suitable portfolio of employment land and premises but the appeal site has not been identified as contributing to this supply. Policy MD4 has limited weight as there are unresolved objections. The policy is intended to contribute towards delivering the strategy, including planning and managing supply, but there was no evidence put forward that the appeal site has been identified as a strategic site or employment land under the emerging policy. The Council could not point to any conflict with paragraphs 21 or 22 of the Framework given that the site is not protected or allocated.

Existing Businesses

22. There are 5 existing businesses on the site. The servicing, repair, MOT and recovery operation of EA Downes and Sons Ltd is split into two parcels. The business would be consolidated on the site with provision of a new workshop. The proposals would benefit the business by providing a single fit for purpose premises with the prospect of additional jobs being created. The Salop Vans operation would move to the large Salop Leisure site on the south-east side of Shrewsbury.
23. There is more uncertainty as to the impact on Pritchard's Vehicle Sales and Hire as differing viewpoints were expressed by the site owner and an employee as to whether the company want to downsize and relocate or continue its operations on the site. That said the existing site appears to be larger than required judging by the unused areas to the rear of the building. In addition

the site owner advised at the hearing that funds from the sale of the land would be released to enable the business to be relocated.

24. The hot food takeaway at 131 Hereford Road would be demolished to make way for the development. The operator indicated that he was on a long lease but had not negotiated an outcome. It would appear that there is an opportunity to secure funds to invest in other premises in the town. So far as the hand car wash operation is concerned the tenancy arrangements are renewable annually. This type of temporary operation does not require significant investment so alternative sites are likely to become available.

Conclusions on the issue

25. Notwithstanding the uncertainties over some of the businesses on the site, overall I conclude that the effect on the supply of employment land and premises, having particular regard to the needs of the existing businesses on the site, would be acceptable. In arriving at this conclusion I have taken into account the clear benefits for one of the businesses on the site. In addition the foodstore itself would generate up to 150 jobs and facilitate construction jobs and indirect employment. In respect of the policy context there is no conflict with the criteria of Policy CS13 and, as the site is not part of the employment portfolio, the proposal is not contrary to Policy CS14 or emerging Policy MD4.

Highway Safety

26. The proposal to widen the existing site access, provide traffic lights and increase the number of lanes, including right turn lanes, within Hereford Road would be a significant improvement compared to the existing situation and would reduce the conflicts between vehicles using the access and those travelling along the main road. The signals would include a pedestrian phase. Traffic lights with pedestrian/cycle phases would provide safer crossings over Hereford Road and Roman Road. These works would allow safe access for pedestrians and cyclists to the development together with providing benefits for other highway users. For example the football fans walking to Greenhous Meadow would find it safer to cross the roads in the vicinity of the site with the new pedestrian crossing facilities.
27. Access to the adjacent petrol filling station via the new traffic light controlled junction and safe parking for the fuel tanker would be included within the proposals. The current conflicts that exist between users of the access would be reduced.
28. The road network is busy, particularly during peak periods. The local network includes the large signalised roundabout at Meole Brace and the convoluted layout by the appeal site. In this context it is understandable that local residents have concerns about the impact of the additional development on the safety and functioning of the network. However, the expert evidence, including that of the Council's Highway Officers, is that the works overall would contribute positively to the management of traffic in the area. There is no evidence before me that would lead me to take a contrary view. In particular I note that the improvements would otherwise be unlikely to be carried out, notwithstanding the significant developments to the south which will add to traffic movements on the network.

29. The works would also involve the installation of a MOVA system to the traffic lights which allows them to respond more sensitively to traffic flows around the area through altering the green light timings. The Council referred to anecdotal concerns of residents who felt that MOVA systems installed elsewhere in the town had not been beneficial. However, no substantive evidence was provided to support this statement. Again the technical evidence indicates that such a system would be a benefit.
30. Accordingly the proposals would lead to a safe and suitable access to the site for all users, including motorists, pedestrians and cyclists, and would have an acceptable impact on the nearby highway network. The development would comply with Policy CS6 as it would be located in an accessible location and would be safe and accessible for all. The proposal would meet the requirements of paragraph 32 of the Framework as a safe and suitable access to the site can be achieved for all people and improvements would be made to the network which would limit the significant impacts of the development.

Other Issues

31. There would be changes to the environment for those living adjacent to the site along Hereford Road. However, the site is already in business use. The back gardens of the neighbouring houses are relatively long, although in the case of No 101 Hereford Road the adjacent section of garden is at lower level. Provided suitable boundary treatments are incorporated into the detailed scheme and plant and servicing are sensitively sited, the development would have an acceptable impact on the living conditions of neighbouring residents. Planning permission would not override any legal rights of access.
32. The development would improve the appearance of the site by replacing a disparate group of functional buildings with modern development incorporating suitable landscaping. The development would not extend beyond the existing boundaries of the site so there would not be any encroachment into the wooded areas alongside Rea Brook. Boundary trees can be safeguarded during construction through protective fencing and suitable excavation methods. There is no evidence that the ecological interests of the brook and its environs would be affected.

Conditions

33. I have considered the conditions put forward by the Council and discussed at the hearing. Conditions relating to the submission of reserved matters and the timing of commencement are needed due to the outline nature of the application. The plan showing the details of the access forms part of the permission and should be referred to for the avoidance of doubt. However, additional details will be required of these works, together with pedestrian and cyclist routing and disabled access within the site, fuel tanker parking and lighting. The schemes need to be implemented in full before trading to ensure safe access for all. I agree that it is necessary to be specific as to what is required in terms of landscaping, including measures to protect existing boundary trees (paragraph 32 refers).
34. Details of drainage are necessary and should be based on sustainable techniques. In view of the existing uses on the site and the findings of the Preliminary Risk Assessment, further site investigation together with any necessary remediation is required. Due to the nature of the access and the

proximity of dwellings a Construction Management Plan is required which should incorporate working times.

35. The principles of the Travel Plan Framework accompanying the application need to be carried through to a travel plan for the future occupiers to encourage journeys by sustainable modes of transport. The net sales area and proportion of comparison goods need to be controlled to reflect the assessment carried out (paragraph 20 refers). Conditions are needed to control floor levels and safeguard access to Rea Brook in the interests of flood risk.
36. Details of refrigeration and air conditioning plant would be part of any reserved matters submission as would the making good of the gable end to 129 Hereford Road. Although the position of the foodstore is not set, delivery and store opening times could have an impact on neighbouring residents. A condition should be imposed to require such details to be approved by the Council once the layout of the site is determined. The B2 workshop forms an important component of the development and its delivery should be secured by a condition.

Conclusions

37. The proposal would be acceptable when judged against the three main issues. The development would also achieve economic, social and environmental gains so providing sustainable development. In particular the proposal would provide jobs, enhance consumer choice and improve the built environment and highways network. With reference to paragraph 14 of the Framework the development is one that should be approved without further delay as it accords with the development plan.
38. For the above reasons the appeal should be allowed and outline planning permission granted, subject to the conditions discussed above.

Mark Dakeyne

INSPECTOR

Attached – Schedule of Conditions

APPEARANCES

FOR THE APPELLANT:

Keith Nutter	Morbaine Limited
Jonathan Wallace	Nathaniel Lichfield and Partners (NLP)
John Lowe	Turner Lowe Associates
Graham Adams	Morbaine Limited

FOR THE LOCAL PLANNING AUTHORITY:

Tim Rogers	Area Planning Manager
Andrew Bannerman	Councillor
Mike Owen	Councillor
Peter Nutting	Councillor

INTERESTED PERSONS:

Richard Holmes	Richard Holmes Associates representing Mid Counties Cooperative
Duncan McCallum	Representing Mid Counties Cooperative
Anne Adams	Local Resident
Kevin Adams	Local Resident
Sula Baugh	Meole Village Residents Association
Clive Pratt	EA Downes and Sons Limited

DOCUMENTS SUBMITTED AT THE HEARING

1. Letter from Graham and Christine Bradbury, Meole Crescent, Meole Brace, Shrewsbury submitted by the Council
2. Policies MD4 and MD10 of the SAMDev submitted by the Council
3. Letter from Environment Agency dated 18 September 2012 submitted by the appellant

SCHEDULE OF CONDITIONS

Reserved Matters

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed Access Arrangements 111206/01/D.
- 5) The details required by condition no 1 shall include:
 - (i) in terms of landscaping: boundary treatments, site remediation or protection of soils, species choice, planting stock type, tree pit design, irrigation system design, arboricultural work based on the Tree Survey recommendations dated 24 August 2012, and long term maintenance proposals;
 - (ii) in terms of layout: the routing of pedestrians and cyclists through the site, including associated ramps; parking, turning and servicing areas, including cycle parking; lighting; and provisions for disabled facilities and access.The scheme shall be carried out in accordance with the approved details prior to the development being first brought into use.

Highways and Drainage

- 6) Prior to the commencement of the development, full engineering details of the signal controlled junction, highway enhancement works, footways and cycle-ways, street lighting and carriageway markings/signs, shall be submitted to, and approved in writing by, the local planning authority. The works shall be fully implemented in accordance with the approved details prior to the development hereby permitted being first brought into use.
- 7) The 'Keep Clear' box as indicated on approved drawing no. 111206/01/D to provide access through to the adjacent site shall be cross hatched prior to the occupation of the development hereby permitted and retained as such whilst it is necessary for the safe operation of the Petrol Filling Station.
- 8) No development shall take place until schemes for the disposal of foul and surface water drainage have been submitted to, and approved in writing by, the local planning authority. The approved schemes shall be completed before the development is first brought into use. The surface water details shall comprise a Sustainable Urban Drainage Scheme and include management and maintenance arrangements for the lifetime of the development.

Contamination

- 9) No development shall take place until a site investigation has been undertaken to assess the nature and extent of any contamination on the site. The site investigation shall be undertaken by competent person and be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11. A report of the site investigation shall be submitted to, and approved in writing by, the local planning authority prior to the commencement of any site works.
- 10) In the event of the site investigation finding the site to be contaminated a further report detailing a Remediation Strategy shall be submitted to, and approved in writing by, the local planning authority. The Remediation Strategy shall ensure that the site does not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.
- 11) Following completion of measures identified in the approved Remediation Strategy a Verification Report shall be submitted to, and approved in writing by, the local planning authority that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.
- 12) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken in accordance with the requirements of condition 9 above, and where remediation is necessary a remediation scheme shall be prepared in accordance with the requirements of condition 10 above, which shall be submitted to, and approved in writing by, the local planning authority.

Tree Protection

- 13) No ground clearance, demolition, or construction work shall commence until a Tree Protection Plan and Method Statement for the use of 'no-dig' working practices, based on the Arboricultural Impact Assessment dated 30 August 2012, has been submitted to, and approved in writing by, the local planning authority. The approved Tree Protection Plan and Method Statement shall be adhered to on site for the duration of the demolition and construction works.

Construction Management

- 14) No demolition or development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the demolition and construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) the days of the week and hours that demolition and construction will take place;

- iii) loading and unloading of plant and materials;
- iv) storage of plant and materials used in constructing the development;
- v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- vi) wheel washing facilities;
- vii) measures to control the emission of dust and dirt during construction; and,
- viii) a scheme for recycling/disposing of waste resulting from demolition and construction work.

Travel Plan

- 15) Prior to the development hereby permitted being first brought into use, a Travel Plan shall be submitted to, and approved in writing by, the local planning authority, based on the Framework Travel Plan dated March 2012, which commits the site operator and businesses to use their best endeavours to reduce car travel to the site and promote more sustainable travel modes such as walking, cycling and the use of public transport. The Travel Plan shall be reviewed by the site operator and businesses and the local authority on an annual basis for the lifetime of the development.

Flood Risk

- 16) Finished floor levels should be set at 600mm above the 1 in 100 year plus climate change flood level at 59.25m AOD and floor levels shall be raised 150mm above surrounding ground levels.
- 17) There shall be no development within 6 metres of the top of the watercourse bank. The area shall be left clear of all buildings, structures and fences. Ground levels shall not be raised within this area.

Foodstore

- 18) The foodstore shall not be occupied until details of the store opening hours and delivery times have been submitted to and approved in writing by the local planning authority. Thereafter the opening hours and delivery times shall be adhered to at all times.
- 19) The foodstore hereby permitted shall not be occupied until the Class B2 workshop (1072 square metres gross internal floorspace) has been completed and is available for use.
- 20) The net sales floor area of the foodstore shall not exceed 1200 square metres. No more than 180 square metres (15%) of the net floor area of the store shall be used for comparison goods allowing 1020 square metres (85%) for convenience goods.

END OF SCHEDULE OF CONDITIONS