



Appeal Decision

Site Visit made on 19 April 2021

by Mr Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2021

Appeal Ref: APP/U4610/W/20/3265208

Land at Asda Stores Ltd, London Road, COVENTRY CV3 4AR

- 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 McDonald's Restaurants Ltd against the decision of Coventry City Council.
 - The application Ref FUL/2019/2814, dated 11 November 2019, was refused by notice dated 18 June 2020.
 - The development proposed is the erection of a freestanding drive thru restaurant with carparking, landscaping & associated works including customer order displays.
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Decision

1. The appeal is allowed. Planning permission is granted for the erection of a freestanding drive thru restaurant with carparking, landscaping & associated works including customer order displays at Land at Asda Stores Ltd, London Road, COVENTRY CV3 4AR, in accordance with the terms of the application, ref FUL/2019/2814 dated 11 November 2019, and subject to the submitted Legal Agreement and attached schedule of conditions.

Application for costs

2. An application for costs was made by McDonald's Restaurants Ltd against Coventry City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. A S106 Legal Agreement¹ has been submitted in the form of three counterpart copies, each one having been signed individually by one of the principal parties. This approach has been taken as the principal parties have been unable to produce a more conventional Agreement due to logistical issues created by Covid-19. Each Agreement has been certified as a true copy and I am therefore satisfied to accept it in this form. The Agreement would provide funding for highway improvements and traffic management measures on London Road and the roundabout adjacent to the site. The Agreement would also fund tactile paving at the ASDA junction and tactile paving and barriers on Humber Road. I shall return to this later in my decision.

Main Issues

4. The main issues are:
 - the effect of the proposed development on highway safety, with particular respect to the local highway network and pedestrian movement routes, and

¹ S106 Legal Agreements – Counterparts dated 13 April (Coventry City Council), 13 April (ASDA), and 13 April (McDonald's Restaurants Ltd)

- the effect of the proposal on the health and wellbeing of children, parents, carers and staff of local schools.

Reasons

Highway safety

5. The proposed restaurant would be located within an area of a car park serving a food store (ASDA). Vehicular access from the proposed restaurant would connect onto the food store's internal road system which would, in turn, connect with an arm of the adjacent roundabout. The roundabout has five arms and is located on a main arterial route from the City Centre. London Road forms two arms of the roundabout and separates the residential area of Whitley from the appeal site. London Road has recently been subject to a speed limit reduction from 40mph to 30mph.
6. During my visit I observed that off-peak traffic levels were relatively high, with pedestrians required to wait some time to cross junctions. Furthermore, the Eastbound junction of London Road has a pedestrian crossing, but this is absent a call button or lights to indicate when it is safe to cross. The westbound crossing point on London Road was unsignalised, although traffic here seemed lighter. As a result, and in consideration of the evidence submitted, it is clear that the current pedestrian access to the site from Whitley is not especially safe for pedestrians.
7. The National Planning Policy Framework (The Framework) requires all development that would generate a significant amount of traffic movement to be supported by a transport assessment to assess the likely impacts. The appellant's Transport Assessment² (The Assessment) uses other McDonalds sites and the Trip Rate Information Computer System for comparison purposes to determine the anticipated impact of the proposal on the local highway. This approach has been agreed as suitable in this case by the Highway Authority. The data illustrates that peak usage would be around 44 vehicles on a Friday Peak time and 28 vehicles on Saturday Peak time, resulting in a limited increase in comparison to the existing traffic levels. The Assessment illustrates that the existing road network has the capacity to accommodate the proposed traffic activity despite the busy nature of local roads.
8. Nevertheless, the appellant's traffic modelling has identified that the traffic levels through the roundabout would be better balanced through the introduction of an intelligent traffic management system (MOVA). Its introduction would mean that the additional vehicles would have no material impact on the operation of the roundabout. Also, the proposed highway works would include the upgrading of the pedestrian crossing facilities adjacent to the southeast corner of the site across London Road to full signal control (ADL Proof of Evidence, appendix 18). This would create a safe crossing route for pedestrians from the Whitley residential area.
9. Additionally, pedestrian safety could also be further improved through the addition of tactile paving around the food store and Humber Road junctions and railings around the Humber Road junction. I find that these measures, as detailed within the Assessment, would be necessary to reduce the risk of accidents occurring in response to the increase in pedestrian activity associated

² ADL Traffic and Highways Engineering Ltd, November 2019.

with the proposal. Furthermore, once delivered, such measures would provide suitable and safe crossing points for pedestrians.

10. Although the Council and interested parties consider that highway risks for pedestrians crossing London Road would be high, this has not been shown in the technical evidence. I therefore see no compelling reason to disagree with the conclusion of the Transport Assessment or the corroborating comments of the Highway Authority.
11. Furthermore, although the roundabout has been subject to accidents in the past, these do not appear to form a pattern which might indicate that its operation or geometry is flawed. As such, accident data associated with the pedestrian routes to the site including London Road, do not show a pattern that is clearly harmful to pedestrian safety. Furthermore, the anticipated pedestrian flow data, and the proposed routes of pedestrians, do not show that the route would be especially hazardous. Therefore, subject to the proposed mitigation, the proposal would not have an unacceptable impact on highway safety.
12. The value of the proposed mitigation works has been determined by the Highway Authority and would be undertaken by the Council once in receipt of the appellant's financial contribution in combination with funding already in place. This would therefore be consistent with Policy IM1 of the Coventry Local Plan (2017) (LP). This policy seeks developer contributions towards infrastructure where this is necessary to support the needs of the development. As such, I am satisfied that the highway improvement sum meets the statutory tests of Regulation 122³ as being necessary and reasonable. The Legal Agreement is a certified and executable document. This provides for the required sums and for them to be paid prior to the commencement of development. Consequently, the method and approach to identifying the required sum is robust and it has been clearly identified where this would be used.
13. Therefore, the effect of the proposed development on highway safety, with particular regard to the local highway network and pedestrian movement routes, would be acceptable following mitigation. As a result, the proposal would accord with policies AC1, AC2 and AC3 of the LP. These seek, among other matters, for development to integrate with existing transport networks and to apply appropriate interventions to mitigate negative impacts. These policies are consistent with the Framework which seeks development to be allowed that would not result in an unacceptable impact on highway safety.

Health and wellbeing

14. Policy R6 of the LP includes the requirement for proposals for restaurants to be in accordance with the Council's Hot Food Takeaway Guidance⁴ (the Guidance). An important purpose of the policy is to manage the prevalence of hot food takeaways in some areas to improve the populations health and wellbeing.
15. The Guidance identifies that the consequences of obesity is a growing problem for the City and creates a significant burden on the health and wellbeing of residents. The Guidance therefore limits the proximity of these uses close to schools. Appendix A of the guidance defines 'school zones' as areas approximately within a 5-minute walk of schools, within which new hot food

³ Community Infrastructure Levy Regulations 2010

⁴ Coventry City Council – Hot Food Takeaway Supplementary Planning Document 2019

takeaways would not be appropriate. This document is a material consideration, and whilst not in itself being determinative, it provides clear guidance with respect to the location of proposed restaurants.

16. The appeal site is not within a 'school zone' as defined by Appendix A. As such, whilst the Council considers that the site is close to two schools, these are not within its prescribed 5-minute walk of the appeal site. The site is therefore deemed to be, in principal, an acceptable location in this regard and would satisfy the Council's Hot Food guidance.
17. The facility would be located on a main road in a relatively prominent position. As such it would be likely to draw custom from a wide catchment. This would not in itself be contrary to the objectives of the Council's guidance.
18. Consequently, it has not been demonstrated that the proposal would have a harmful effect on the health and wellbeing of children, parents, carers and staff of local schools. Accordingly, the proposal would accord with policy R6 of the LP and the Framework which seeks for development to achieve healthy and inclusive places.

Other Matters

19. The nearest residential properties are around 60 metres to the south of the site across London Road. Conditions have been suggested that would require the extract system to meet the Council's requirements, limit delivery hours and to comply with the recommendations of the Noise Assessment. As a result, the impact of the proposal with respect to noise, smell and light pollution would be negligible. Furthermore, due to the separation distance and landscape screening, the impact of the proposal on the privacy of residential occupiers would also be limited.
20. It is understood that preparatory work for the proposal has resulted in the loss of a semi-mature tree and some associated planting. As a result of this loss a condition has been suggested that would require two new trees to be planted. This would supplement new landscaping already proposed in support of the scheme. As a result, the limited loss of green infrastructure could be adequately off-set by replacement planting.
21. Conditions have been suggested that would require any new gas boiler to meet a low emission rate and for the car park to include an electric car charging point. As a result, the effect of the proposal on air pollution would be adequately addressed by these measures.
22. Interested parties have raised concerns that the proposal fails to take into account the traffic associated with recent local development including at City Heritage Park, Blue Coat School, housing associated with allocation policy H2:9 and the recycling facility on London Road. However, the first two developments are some distance from the site. Also, the housing estate was allowed, without the requirement for highway improvements, as sufficient funds were already in place for planned improvements to the roundabout through the Whitley South development⁵. Also, heavy goods vehicles associated with the approved recycling facility would principally operate during off-peak times. Accordingly, I am satisfied that the nearby approved development would have only a negligible impact on traffic levels using the roundabout. As such, considered

⁵ Coventry City Council, Highway Authority consultation response 16/12/20

cumulatively, these recent developments would have a limited impact on the traffic modelling undertaken in support of the proposal.

23. The site is within a foodstore car park. Policy R6 of the LP seeks to locate restaurants and hot food takeaways within defined centres. Although outside a defined centre, the sequential test has shown the site to be sequentially preferable having considered and eliminated any sequentially preferable sites within the identified local centres.
24. Comments from West Midlands Police indicate that crime levels associated with the type of restaurant proposed are not as high as those already recorded on site. Nevertheless, the existing crime levels may raise slightly as a result of the proposal. However, crime and anti-social behaviour is best addressed through anti-crime measures such as windows that provide natural surveillance of the car park, the installation of CCTV and by ensuring that the site is well illuminated at night. The Council is satisfied that the proposal has taken crime and security measures into account in the design and I can see no reason to disagree with this assertion. Consequently, the proposal would not raise substantial concerns with respect to crime and antisocial behaviour. I am also satisfied that litter can be adequately managed by the operator's stated approach to a regular litter picking regime.
25. The proposed restaurant would replace 79 parking spaces within the superstore's car park and assign 30 spaces for the restaurant. This would retain 398 spaces for the food store. Surveys undertaken by the appellant has illustrated that the foodstore has an over provision of parking. Consequently, the proposed loss of parking spaces would be unlikely to result in overspill parking or congestion on local roads.
26. I have also taken into account representations made in regard to the type of jobs offered by the operator and the proximity of other similar restaurants, but these matters do not affect my findings on the main issues.

Conditions

27. I have considered the use of conditions in line with guidance set out in the Government's Planning Practice Guidance (PPG). I shall take the Council's suggested conditions into consideration and impose these with some amendments and adjustments for clarity. I have simplified the condition in regard to new tree planting to remove the replacement planting element as this is repeated elsewhere.
28. I have imposed the standard conditions advised by the PPG for clarity and certainty [conditions 1 and 2]. Conditions with respect to unexploded ordnance, unexpected contamination and requiring compliance with the Geo Environmental Strategy are required to safeguard health and safety in respect of policy EM6 of the LP [3, 4 and 5]. Conditions relating to the Construction Environmental Plan, compliance with the Noise Assessment and goods delivery times, and details of fume extraction are necessary to safeguard the living conditions of nearby residents [6, 7 and 9]. A condition is also necessary to mitigate the impact on air quality in accordance with policy DS3 of the LP [8]. Furthermore, conditions are necessary with respect to replacement tree planting, tree protection measures, landscaping details and for the scheme to be constructed in the annotated materials in the interests of the character and appearance of the area [10, 11, 12 and 14]. A Further condition is necessary,

in regard to drainage matters, to satisfy policies EM1, EM4 and EM5 of the LP [13].

29. The application form indicates that the proposed hours of use would be 6am to midnight daily. The Council has not suggested a condition to limit the hours of use and one has not been recommended by the Council's Environmental Protection officer. This accords with the findings of the Noise Assessment⁶ which found noise from the car park would be no higher than background noise levels at any time. The site is away from residential properties, beyond London Road and adjacent to a 24-hour petrol filling station. Therefore, although the officer report indicates that control over hours of use may be required, such a requirement would not be necessary in this context.

Conclusion

30. The proposal would accord with the development plan. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal is allowed and planning permission is granted subject to the attached conditions and associated S106 Legal Agreement.

Mr Ben Plenty

INSPECTOR

⁶ Loven Acoustics, Noise Impact Assessment 30/10/19

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: Proposed Landscape Plan 7305 AEW 8761 1015 Rev C; Proposed Site Plan 7305 AEW 8761 1004 Rev F; Block Plan: 7305 AEW 8761 1002 Rev B; Proposed Elevations: 7305 AEW 8761 1005 Rev E; Proposed Floor and Roof Plan: 7305 AEW 8761 1006; Proposed Building Sections: 7305 AEW 8761 1061; and Location Plan: 7305 AEW 8761 1001.
- 3) The development hereby permitted shall only proceed in strict accordance with the recommendations of the approved 'Detailed Unexploded Ordnance (UXO)' report; Ref. DA7058-01, dated 12/05/2020.
- 4) In the event that contamination or unusual ground conditions are encountered during the development it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary, a remediation scheme must be prepared for submission to and approval in writing of the Local Planning Authority. Following completion of the measures identified within the approved remediation scheme, a verification report must be prepared for submission to and approval of the Local Planning Authority.
- 5) The development shall only be undertaken in accordance with the recommendations in the Geo-Environmental Site Investigation by Pam Brown Associates and placement of a clean cover system across landscaping areas shall be provided as a suitable planting medium. Verification of this shall be submitted to the Local Planning Authority for approval in writing prior to the first operation of the restaurant.
- 6) The development hereby approved shall be carried out in strict accordance with the details in the approved Construction Environmental Management Plan Issue:4 10 March 2020.
- 7) The development hereby approved shall be adhere to the approved noise assessment by Loven Acoustics, dated 30th October 2019 and reference LA/1632/01aR/ML at all times and Goods deliveries shall only take place between 06:00 and 22:00 hours Monday to Saturday and 08:00-20:00 on Sundays and Bank Holidays, and shall adopt the good practice measures contained within section 7.9 of the noise report for the operation of the restaurant.
- 8) Any gas boilers installed on site shall have a dry NO_x emission rate of no more than 40mg/kWh. A minimum of one electric vehicle recharging point shall be provided prior to commencement of the operation and shall not be removed or altered in any way and shall be kept available for such use by customers at all times.
- 9) The use hereby permitted shall not commence unless and until the fume extraction and odour control equipment has been fully installed in its

entirety in accordance with the approved kitchen extract odour control document. The equipment shall thereafter be permanently maintained in full accordance with the manufacturer's instructions and be operated at all times when cooking is carried out.

- 10) Within three months of the implementation of the development hereby permitted two trees, *Aesculus X Neglecta* 'Autumn Fire' at semi-mature specification 20-25cm girth shall be planted as per the approved proposed site plan 1004 Rev E.
- 11) No development or other operations (including any demolition, site clearance or other preparatory works) shall commence unless and until the tree protection measures identified in the approved application documentation have been put into place in strict accordance with the approved 'Arboricultural Impact Assessment Arboricultural Method Statement & Tree Protection Plan Rev B' and thereafter they shall remain in place during all construction work. In addition no excavations, site works, stock piling, trenches or channels shall be cut or pipes or services laid, no fires shall be lit within 10 metres of the nearest point of the canopy or root protection area of any protected tree(s); no equipment, machinery or structure shall be located within this zone; no mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area or any other works carried out in such a way as to cause damage or injury to the tree(s) by interference with their root structure and that no soil or waste shall be deposited on the land in such a position as to be likely to cause damage or injury to the tree(s).
- 12) Prior to the first occupation of the development hereby permitted, details of both hard and soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority. Details of hard landscaping works shall include boundary treatment, including full details of the proposed boundary walls, railings and gates to be erected, specifying the type of bricks and colour of the railings and gates; footpaths; and hard surfacing (which shall be made of porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area). The hard landscaping works shall be completed in strict accordance with the approved details within three months of the first occupation of the restaurant hereby permitted; and all planting shall be carried out in accordance with the approved details within the first planting and seeding seasons following the first occupation. Any tree(s) or shrub(s) which within a period of five years from the completion of the development dies, is removed or becomes; in the opinion of the Local Planning Authority; seriously damaged, defective or diseased shall be replaced in the next planting season with another of similar size and species. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS 8545:2014 Trees: from nursery to independence in the landscape - Recommendations and BS4428 - Code of Practice for General Landscape Operations.
- 13) Prior to the occupation of the development hereby permitted the following drainage details shall be submitted to and approved in writing by the Local Planning Authority: i. A scheme for the provision of surface water drainage,

incorporating SuDS attenuation techniques and a limited discharge rate (of 5l/s). ii. A detailed strategy for the long-term maintenance of the SuDS and other surface water drainage systems on site. iii. A 5m way leave from the top bank of any ordinary watercourse to the building line. iv. An appropriately scaled intrusive ground investigation report to establish the depth and type of strata, including percolation results in accordance with BRE 365 and the presence and risk associated with migrant contaminants. v. permeable paving or similar permeable material for the management of total surface water flows, and water filtering in accordance with Coventry City Council's adopted Supplementary Planning Document for 'Delivering a More Sustainable City'. vi. a scheme to install trapped gullies serving the vehicular car access and parking facilities, together with a periodic maintenance plan. vii. Where new or redevelopment site levels result in the severance, diversion or the reception of natural or engineered drainage flow, the developer shall maintain existing flow routes (where there are no flood risk or safety implications) or intercept these flows and discharge these by a method approved by the Local Planning Authority. viii. Foul drainage plans. The drainage details shall be installed in full accordance with the approved documentation prior to occupation of the development and thereafter shall be maintained and shall not be removed or altered.

- 14) The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan reference 'Proposed Elevations: 7305 AEW 8761 1005 Rev E'.

End of Conditions