

Appeal Decision

Hearing Held on 24 October 2018

Site visit made on 24 October 2018

by Mike Worden BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2019

Appeal Ref: APP/W4223/W/18/3195812

Asda Supermarket, Greenfield Lane, Shaw, OL2 8QP

- 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 Asda Stores Ltd against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/339852/17, dated 1 March 2017, was refused by notice dated 26 September 2017.
 - The development proposed is a petrol filling station.
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Decision

1. The appeal is allowed and planning permission is granted for a petrol filling station at Asda Supermarket, Greenfield Lane, Shaw OL2 8QP in accordance with the terms of the application, Ref PA/339852, dated 1 March 2017, subject to the conditions on the attached schedule.

Procedural Matter

2. The appellant has asked me to consider four amended plans which are revisions to the plans before the Council when it made its decision. The revised plans are all dated 19 January 2018, which is after the date when the Council issued its decision notice. Two of those plans show a proposed site for the relocated recycling facility, and one other shows more detail in relation to the proposed layout of that facility. The other plan shows some minor alterations to the proposed petrol filling station layout. After hearing from the parties, including some of the local residents present, and having regard to the *Wheatcroft* principles, I have decided not to accept them. I have therefore considered the appeal on the basis of the plans before the Council's Planning Committee when it made its decision.

Main Issues

3. The main issues are the effect of the proposed development on:
 - highway safety;
 - the living conditions of neighbouring residents with particular regard to noise; and,
 - the provision of recycling facilities within the supermarket site.

Reasons

Highway Safety

4. The appeal site is an area of an existing car park of the Asda supermarket in Shaw. It is occupied by around 36 car parking spaces, and a recycling facility.
5. The car park is accessed from Greenfield Lane via a give way junction at a point at which Greenfield Lane makes a sharp bend into Moss Hey Street. The access road bends round to the left and then to the right into the main part of the Asda car park. The appeal site is a smaller and separate part of the car park and lies between the access road and Greenfield Lane, and is the part of the wider car park furthest away from the entrance to the supermarket.
6. The surrounding area is in mixed use with residential and commercial uses nearby. The supermarket lies close to Market Street, the main shopping street in the district centre, and close to the Metrolink station. There is another supermarket just off Greenfield Lane close to the appeal site. There is an engineering business on the sharp bend of Greenfield Lane adjacent to the car park entrance, and a short terrace of two storey houses on Greenfield Lane immediately opposite the appeal site.
7. The proposed development is to construct a petrol filling station. This would involve the loss of the existing car parking spaces and would require the relocation of the recycling facilities. The petrol filling station would have a one way system, with an entrance off the access road and an exit, onto the access road, beyond it. The petrol filling station would have eight filling points.
8. The proposal would reduce the total number of car parking spaces on the car park from around 316 to around 280. There would be a further very slight reduction if, as is proposed, the recycling facility was located on existing spaces. The Council does not consider that the reduction in car parking spaces would in itself lead to harm to highway safety but is concerned that there would be insufficient space for the stacking of vehicles within the car park which would cause queuing which in turn could be detrimental to highway safety. Some of the local residents consider that the reduction would have a significant impact on queueing as shoppers would be waiting and looking for car parking spaces in the car park.
9. The appellant submitted a car parking survey which shows that the surplus of available spaces at peak times would reduce from around 62 to around 26. This would increase the maximum rate of demand during peak periods from 80% to 91%. Although some residents express concern with the period of the observed survey, it was undertaken over a six week period and I have no reason to doubt its findings.
10. The petrol filling station would lead to an increase in the number of trips, although a proportion of users of the facility would be customers of the store who would buy fuel on the way to or from the supermarket. The appellant has provided trip rates based upon both a 70/30 and a 50/50 split of fuel customers visiting the store/fuel customers only. The Council does not dispute the trip generation figures. A local resident considers that in his experience of managing a petrol station, the figures significantly underestimate likely demand. He considers that the rates should have been calculated on litres of fuel to be sold per week basis. He also considers that the hourly trips could be

as high as 108 vehicles at certain times. I consider that such a high hourly rate is not supported by evidence. I have no other alternative figures before me however, and given that the trip rates are not disputed by the Council, I have given them significant weight in my consideration.

11. The peak trip generation hours would be early morning and late afternoon on a weekday and late morning on a weekend. In accordance with the submitted evidence, the highest hourly rate would 39 vehicles and as the petrol filling station could accommodate 16 vehicles, I consider that the proposed development would be unlikely to, lead to vehicles queuing on the access road to get in even at peak times. The entrance to the petrol filling station would be only a short distance from the junction of the access road and Greenfield Lane, but for the reasons above I consider that the forecourt area would have sufficient capacity to accommodate vehicles so as to avoid the likelihood of queues on the access road which would block access to the car park. I therefore consider that the proposal would be unlikely to lead to harm to highway safety as a result of queuing.
12. The local business immediately adjacent to the appeal site is concerned that the proposal could lead to queuing on Greenfield Lane which would hold up deliveries of materials to that business, and another local business is concerned about the potential impact of queuing on Greenfield Lane on the operation of the business. For the reasons above however, I consider that the proposal would be unlikely to lead to queueing on Greenfield Lane.
13. The proposal includes some alterations of the layout of the junction of the access road and Greenfield Lane. I consider that this alteration will assist with the movement of tankers through the junction and around the immediate left hand bend. I have taken into account the concerns of residents in relation to tanker deliveries, but on the basis of the evidence before me, including the submitted swept path analysis, I consider that this would not cause harm to highway safety.
14. I have also taken into account that the petrol filling station would be designed for non- commercial vehicles in terms of pump type and payment facilities, and so it is unlikely that large commercial vehicles, other than deliveries, would be attempting to get onto the forecourt. I was referred to a proposal for a housing scheme nearby but on the basis of the evidence before me, I am not persuaded that its development would alter my conclusions.
15. Paragraph 109 of the National Planning Policy Framework (the Framework) indicates that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. I consider that the proposal would not lead to either, on the evidence before me.
16. For the reasons set out above, I conclude that the proposed development would not cause harm to highway safety and would accord with Policy 9 of the Council's *Joint Core Strategy and Development Management Policies Development Plan Document* 2011 (the DM DPD) which seeks to ensure that development protects local environmental quality and amenity.

Living conditions with regard to noise

17. Four properties lie immediately opposite the appeal site on Greenfield Lane and face towards it. The properties are two storey houses within a short row. They are separated from the appeal site by the carriageway and pavements either side. The appellant has calculated that these properties would be around 25m away from the petrol filling station. This was disputed by residents at the hearing and a figure closer to around 18m separation distance was put forward as being a more realistic estimate of the separation distance between the houses and the location of the proposed pumps.
18. The appellant accepts that it is likely that some of the pumps could be around 18m away and some around 30m away. However, the appellant contends that this would not result in an unacceptable increase in noise levels experienced by the occupants of the houses as that in the worst case scenario of refuelling at night, the noise levels would still not reach more than +5dB over the existing background noise levels. +5dB is the appropriate British Standard BS4142:2014 at which point there would be an adverse impact.
19. I have no technical evidence to the contrary and it would appear to me that given the findings in the report and the evidence presented that the figure would be +3dB at night, it would be unlikely that there would be an increase of more than +2dB as a result of the revised distance estimate. Conditions are imposed to control hours of operation and delivery, and to ensure that noise generating activity would be prevented from taking place at unreasonable hours.
20. For the reasons set out above, I conclude that the proposed development would not cause harm to the living conditions of the occupants of neighbouring properties with particular regard to noise, and would accord with Policy 9 of the DM DPD.

Recycling facility

21. The proposed development would remove the existing recycling facility. This facility is considered to be an important community asset by local residents and by the Council. The submitted plans included an alternative site for the facility on the car park, but a revised plan without it shown was submitted prior to the determination of the application by the Council. Although I have not accepted the appellant's further amended plan once again showing a location of the replacement recycling facility, I am of the view that a suitable location could be found.
22. Therefore I consider that a condition could be imposed to require the appellant to submit details of such facility and that these details would have to be agreed by the Council and the facility provided in accordance with those approved details to ensure compliance with Policy 7 of the DM DPD which seeks to secure appropriate waste management facilities in the borough. At the hearing one of the Councillors present suggested that these details could be subject to consultation with local residents before being agreed by the Council and I have no reason to believe that could not happen.

Other matters

23. Residents have expressed concerns about the safety of the facility and its operation. I have no evidence to indicate that the proposal would present an

unacceptable risk to health and safety or would lead to unsocial behaviour. I have taken into account the measures which the appellant intends to undertake, including CCTV monitoring, and which are set out in the Council's Committee Report. I have also imposed conditions relating to hours of operation. Residents have also expressed concerns about light spillage and I have imposed an appropriate condition to control the design and operation of the floodlights.

24. The existence of recently erected signs on the car park has been brought to my attention. The signs relate to hours of stay. I do not consider that the signage concerned, which the appellant indicated would be removed in any case, is a matter which is particularly relevant to the planning issues before me.

Conditions

25. I have considered the conditions suggested by the Council having regard to the Framework and the Planning Practice Guidance. I have made some minor amendments to some of the conditions for conciseness and clarity. In addition to the standard condition relating to the time period for implementation, there is a need for a condition specifying the relevant plans as this provides certainty.
26. There is a condition needed to ensure that the details of the floodlighting are agreed by the Council and implemented accordingly, in the interests of the amenity of the occupants of nearby residential properties.
27. Conditions are required to control the hours of operation of the proposed petrol filling station and the hours of when fuel can be delivered to the site, both in the interests of residential amenity. I have taken into account the comments of the Council made at the hearing, but consider that the hours of operation in both cases should be as set out in the Council's Committee Report. There is also a need for a condition to control the hours of operation of non-fuel services on the site, in the interests of residential amenity.
28. There is a need to ensure that the proposed development cannot become operational until the junction with Greenfield Lane has been widened in accordance with the approved plans, in the interests of highway safety. There is a condition required to ensure the protection of retained trees on the site and a condition requiring the approval of landscaping details in the interests of the character and appearance of the area. I have however not referred to the specific landscaping plan highlighted in the suggested condition, as it is not before me and is not listed as one on which the Council made its decision.
29. A condition needs to be imposed to secure the relocation of the recycling facility, in the interests of appropriate waste management. I have made a minor change to the condition agreed by the parties, primarily to make it clear that the facility shall be implemented in accordance with agreed details.

Conclusion

30. For the reasons given above I conclude that the appeal should be allowed.

Mike Worden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Keith McGillivray	Systra
Rebecca Dennis	Pegasus Group
John Stamp	Noise Solutions Ltd
Adam Meakins	Noise Solutions Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Hannah Lucitt	Oldham Council
Wendy Moorhouse	Oldham Council
Councillor Steven Bashforth	Chair, Planning Committee, Oldham Council

INTERESTED PERSONS:

Councillor Howard Sykes	Ward member, Oldham Council, & Parish Council member
William Bowes	Local resident
Wendy Bowes	Local resident
Muaaz Munshi	Local resident
Julie Hughes	Data Precision Components
Anne Pickersgill	Local resident
M. Leach	Shaw Tyre and Exhaust Ltd
Mr P. Dutton	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Final Statement of Common Ground
- 2 Tree Constraints Plan Drawing number 02

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: Drawing number (PA) 01 Rev A – Site Location Plan; Drawing number 02 Tree Constraints Plan; Drawing number (PA) 03 (Rev B) Proposed Store Plan; Drawing number (PA) 04 (Rev B) PFS Scope of works; Drawing number (PA) 05 Rev B PFS Elevations; Drawing number (PA) 06 (Rev A) Forecourt Sections, Drawing number (PA) 07 Proposed Kiosk Elevations; Drawing number (PA) 08 Proposed Kiosk and Roof Plan; Drawing number (PA) 09 Lighting Column and CCTV details.
- 3) Notwithstanding the plans hereby approved, the floodlights shall not be erected unless and until a detailed scheme has been submitted to and approved in writing by the Local Planning Authority providing the following information: i) a specification of the lighting unit, ii) details of light spillage, iii) operational times.

The floodlights shall be installed and operated in full accordance with the approved scheme in the positions identified on Drawing number (PA) 04 Rev B PFS Scope of works.
- 4) No fuel delivery vehicles shall enter, leave, be loaded or unloaded within the site outside of the hours of 07:00 to 22:00 Monday to Saturday and 09:00 to 17:00 on Sundays and Bank/Public holidays.
- 5) The proposed air and water unit identified on Drawing number (PA) 04 (Rev B) shall only be allowed to operate during the hours of 07:00 to 23:00 Monday to Saturday and 09:00 to 20:00 on Sundays and Bank/Public holidays.
- 6) No development shall commence until the Root Protection Areas of all trees to be retained on the site (identified on drawing number 02) have been protected by fencing in accordance with the specifications set out in section 17.4 of Appendix C supplementing the Tree Survey Report (ref. A3197) by Encon Associates. Thereafter, no equipment, plant, machinery, or materials shall be operated or stored within the Root Protection Areas at any time. The protective fencing shall only be removed once the development has been substantially completed in accordance with the approved plans and specifications but must be removed prior to the petrol filling station first being brought into use.
- 7) The development shall not be brought into use until a scheme of hard and soft landscaping has been carried out in accordance with the details and a programme submitted to and agreed in writing with the local planning authority. Any trees or shrubs which die, are removed or become seriously damaged or diseased within a period of five years from the completion of the development, shall be replaced in the next planting season with others of a similar size, number and species.
- 8) The petrol filling station hereby approved shall not be brought into use until the existing vehicular entrance to the car park has been widened

and all new directional markings on the access road have been provided in full accordance with drawing number PA (04) Rev B.

- 9) The petrol filling station hereby approved shall only be open to customers between the following hours: 07:00 to 23:00 on Monday to Saturday, and 10:00 to 18:00 on Sundays and Bank/Public holidays.
- 10) The details of the proposed replacement recycling facility shall be submitted to and approved in writing by the Local Planning Authority before any works commence on the part of the site where the facility currently exists. The recycling facility shall be implemented in accordance with the approved details and shall remain available to the public at all times and in perpetuity.

END OF CONDITIONS