

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 16/01/17

**gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 06.03.2017

Appeal Decision

Site visit made on 16/01/17

**by Declan Beggan BSc (Hons) MSc DipTP
DipMan MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 06.03.2017

Appeal Ref: APP/H6955/A/16/3163233

Site address: Land at Five Crosses Inn, Ruthin Road, Minera, Wrexham, LL11 3UT

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 NewRiver Retail Property Unit Trust No. 4 against the decision of Wrexham County Borough Council.
- The application Ref MIN P/2016/0540, dated 15 May 2016, was refused by notice dated 5 September 2016.
- The development is the 'erection of Class A1 convenience store with associated car parking, access arrangements, landscaping and ATM machine'.

Decision

1. I allow the appeal and grant planning permission for the erection of Class A1 convenience store with associated car parking, access arrangements, landscaping and ATM machine at land at the Five Crosses Inn, Ruthin Road, Minera, Wrexham, LL11 3UT in accordance with the terms of the application, Ref. MIN P/2016/0540, dated 15 May 2016, and the plans submitted with it, subject to the conditions in the schedule at the end of this decision.

Background and Procedural Matters

2. The appeal site currently benefits from planning permission¹ for a 232 sq.m. retail unit with a 23 space car park with 9 spaces for use by visitors to the retail unit and 14 for use by visitors to the public house.
3. A Unilateral Undertaking (UU) has been submitted with the appeal documentation. The UU contains an obligation for the provision of a financial contribution towards implementing a Traffic Regulation Order (TRO) to restrict parking along Ruthin Road; the previous permission for the site was subject to a similar UU.
4. Planning Policy Wales (PPW) Edition 9 was issued on 17/11/2016 and replaces PPW Edition 8. The advice contained in PPW does not alter the advice in so far it pertains to the identified main issue. I therefore do not consider any prejudice would arise in my dealing with this appeal on the basis of the revised PPW.

¹ Ref. P/2015/0644 for erection of class A1 (retail) convenience store with associated parking, access arrangements, landscaping and ATM machine granted 29/4/2016

Main Issue

5. I consider the main issue to be the effect of the proposed development on highway safety.

Reasons

6. The appeal site which is located on the car park of the Five Crosses Inn, is accessed directly off the A525 which is known locally as the Ruthin Road, and lies on the edge of the settlements of Minera and Coedpoeth. The site lies close to a junction which serves the Ruthin Road, Gwernygaseg Road, the B5430 Talwrn Road and the B5426 Minera Road. Ruthin Road leads in an easterly direction to Wrexham and to Ruthin in the west. A footpath runs along the site frontage on Ruthin Road, whilst further along the road can be found a bus stop. To the north of the site is a residential estate known as Aldergrove Place, to the north-west is the Five Crosses Industrial Estate, whilst further to the south and east can be found mainly residential areas. Ruthin Road has a speed limit of 30mph in the vicinity of the site.
7. The appeal proposal seeks to increase the gross floor area of the consented scheme by 93 sq.m., which brings the overall gross floor area to 325 sq.m., and to provide 20 car parking spaces, which is 3 less than that previously permitted. The submitted details indicate that 9 spaces will be allocated for use by visitors to the retail unit and 11 for use by those visiting the public house. The car parking area would also be used at times by delivery vehicles that would service the retail unit, in addition to serving the needs of the existing public house; the Council have raised no objections to this aspect of the scheme. The existing access to the site will be closed and replaced with a new access closer to the public house.
8. The Council's refusal reason refers to Policy T8 of the adopted Wrexham Unitary Development Plan 1996-2011 (UDP) which requires that new development provide vehicle parking either on the site or nearby in accordance with Council's current parking standards. The policy also states that special regard will be paid, amongst others, to the availability of public transport, proximity to public car parking, and road safety hazards arising from on street parking in the vicinity of a site.
9. The adopted Local Planning Guidance Note 16 'Parking Standards' (LPGN16) sets out maximum standards for each type of development and states that where developments are close to local services and facilities and/or are in areas where people are able to walk or cycle to them or travel to them easily by public transport, it may be appropriate for less on-site parking to be provided than for developments in remoter areas. The maximum number of car parking spaces the proposed development would be required to provide in accordance with LPGN16 is 43, which is 23 more than that proposed. The Council's highways section considered that the proposed parking provision would be inadequate for the development and as a result may encourage on-street parking in the vicinity of the site which would pose a risk to highway safety; this view echoes the concerns of third parties.
10. The appellant has carried out a parking assessment² based on surveyed public house parking demand which has been added to TRICS data (Trip Rate Information Computer System) to inform the assessment of parking for the proposed development. The evidence indicated that the car park would operate within capacity

² May 2016 Transport Statement submitted with the planning application

on all assessed days. To assist with the assessment of parking provision a further assessment of convenience store parking demand was carried out at a Rhostyllen store³. The result of that survey indicated a maximum demand of only 9 parked cars at any one time, which supports the previously submitted TRICS assessment. In addition the appellant undertook a parking survey⁴ at a similar nature of development that was recently allowed on appeal and which is now operational. That survey supported the findings of appellant's initial parking assessment as referred to above. The Council has not countered the surveyed data with any substantive evidence of its own.

11. The Council accept that peak demand for the use of the car park is unlikely to overlap significantly and therefore 'free' spaces allocated for the retail use could be used to cater for demand generated by visitors to the public house and vice versa. Nonetheless the Council maintain that the parking provision for both buildings on the overall site falls short of that required by the LPGN16.
12. Whilst the appellant argues that the evidence indicates the car park would operate within capacity, nevertheless, a survey⁵ was carried out to assess on street parking in the locality. The survey identified available legal spaces to park on Bryn Hyfryd, Gwernygaseg Road, Nant Lais, Ruthin Road and Talwrn Road. The Council question the appropriateness of the suggested on street parking that may facilitate any overspill parking due to the distances involved and the likelihood that customers utilising the shop will want to park as close as possible to it. Based on my site observations, I consider a significant number of the identified on-street parking spaces are sufficiently close to the appeal site which are likely to be used by customers in the event that there are no on-site spaces available. The Council also refer to the risk that some customers may choose to park indiscriminately on nearby roads with particular reference to Ruthin Road, however, I do consider this is likely to occur due to the imposition of a TRO which would restrict parking along Ruthin Road near to the site, and the availability of the previously discussed legal on-road spaces nearby. In addition any parking that is illegal or dangerous and results in an obstruction could be subject to other legislative controls.
13. The appellant's Transport Statement⁶ (TS) indicated the proposed convenience store will be subject to a staff travel plan, which will seek to reduce car borne, particularly single occupancy, staff trips to/from the development site in order to maximise the potential for travel by sustainable modes. This travel plan can be secured by planning condition. I am not aware of how many staff would be required at one time, however the application details indicate a total of 6 full time and 14 part time staff. The proposed development would also provide for 3 cycle parking spaces in accordance with LPGN16 and therefore would encourage more sustainable modes of transport.
14. In addition, the site is accessible by foot which will be assisted by pedestrian improvements including,
 - a new pedestrian refuge island with dropped kerbs and tactile paving on Ruthin Road.

³ Refer to the appellant's statement of case at paragraph 5.2.3

⁴ Refer to the appellant's statement of case at paragraph 5.3.5

⁵ Refer to paragraph 5.24 onwards of the Appellant's appeal statement

⁶ May 2016 Transport Statement submitted with the planning application

- the existing footway on the south-western side of Ruthin Road will be extended to the proposed refuge island and widened to 2.0 m.
 - the existing Minera Hall Road/Ruthin Road junction bell-mouth will be widened and a new pedestrian refuge island provided with dropped kerbs and tactile paving.
 - the existing footway on the north side of Gwernygaseg Road will be widened and the Gwernygaseg Road/Ruthin Road junction will be improved to include dropped kerbs and tactile paving.
15. I appreciate that the number of proposed parking spaces falls short of that stated on the LPGN16, however national planning policy in PPW and advice in Technical Advice Note 18: Transport (TAN18), both seek to reduce dependence on the private motor car. As referred to above, the advice as contained within LPGN16 relates to maximum standards for development and where development is close to local services and facilities and/or are in areas where people are able to walk or cycle to it or travel to it easily by public transport, it recognises it may be appropriate for less on-site parking to be provided. In this case the proposed development would be accessible by foot from neighbouring residential areas, would provide cycle parking and is served by public transport⁷, all of which should encourage a more sustainable mode of accessing the site. It is worth noting that in accordance with national policy the Council has no minimum parking requirements.
16. In addition LPGN16 recognises that where the parking provision is below the maximum then the decision maker will need to be satisfied that this is appropriate for the likely level of demand. Based on the appellant's submitted surveys the proposed development in parking terms should be able to operate within capacity, and therefore the provision of 43 spaces as required by the maximum standards in LPGN16 would be an over provision.
17. Drawing the threads of the above together, I consider the proposed car parking provision is proportionate; consequently I do not consider the proposal would have a detrimental impact on highway safety. The proposed development would not be contrary to, nor undermine policy T8 which requires development to provide vehicle parking spaces either on site or nearby in accordance with the Council's current parking standards. I also find no conflict with LPGN16.

Other Matters

18. Occupants of nearby dwellings argue the proposed development would be detrimental to their amenities due to the comings and goings of customers and delivery vehicles, and due to the proximity of the proposed building and boundary fencing.
19. Whilst I appreciate the proposed building is in close proximity to nearby dwellings, nonetheless it is set to the side of the principal elevations of those properties along Aldergrove Place with any views from the properties being at oblique angles; consequently I do not consider it would be unduly detrimental to their visual amenities. As regards concerns related to the proposed service yard, it will be in the same position as previously approved; I would tend to agree with the Council that the increase in floor area of the store is unlikely to result in a significant intensification in the use of the site compared to the permitted scheme. The Council has suggested planning conditions restricting the shop opening times and restricting the hours of delivery/refuse collections which should, subject to amendment, safeguard adjacent

⁷ Refer to paragraphs 2.4.1-2.4.4 of the TS

residential amenities. As regards the boundary fencing to Aldergrove Place, this is to comprise of a 1.2 m high fence, which notwithstanding the difference in land levels, is highly unlikely to make any material difference to daylight entering adjacent dwellings.

20. Other concerns were made in regards to highway safety and provision for pedestrians to cross the road, however setting aside the Council's highway concerns related to parking provision, they raised no highway objections to the proposed development in any other respect; I have no reason to take a contrary view. In addition, as referred to above the proposed development would provide for a number of pedestrian improvements to the local highway network.

Obligation and Conditions

21. I have considered the conditions suggested by the Council, given my decision to allow the appeal. In doing so I have had regard to the tests for conditions set out in Circular 016/2014: *The Use of Planning Conditions for Development Management*.
22. I agree that condition 1 is necessary in regards to the imposition of the five year time limit. Condition 2 is necessary to facilitate any minor material amendments and to define the plans with which the scheme should accord for the avoidance of doubt. Condition 3 is necessary in the interests of highway safety. Condition 4 is necessary in the interests of pollution control. Condition 5 requires the submission and approval of a Service and Delivery Management Plan (SDMP). The appellant questions the need for the condition when one has already been submitted which could be subject to an implementation condition. I note the contents of the submitted SDMP, however it refers to deliveries occurring from 7.00 am which would run contrary to one of the Council's other proposed conditions; consequently I consider the submission of a new SDMP is necessary.
23. Condition 6 is necessary in the interests of safeguarding adjacent residential amenities and highway safety. I agree that condition 7 is necessary in order to control the external appearance of the building in the interests of visual amenity. Conditions 8 & 9 are necessary in the interests of pollution control. Condition 10 relating to the submission and approval of a travel plan is necessary in the interests of highway safety and forms one of several measures aimed at reducing unnecessary parking on the site; contrary to the appellant's views, without compelling evidence to the contrary, I consider the approved travel plan should remain operational for the life of the development. Conditions 11 and 12 relating to landscaping matters are necessary in the interests of visual amenity.
24. Conditions 13, 14, & 15 which relate to boundary fencing, noise level of air handling plant, and lighting are all necessary in the interests of adjacent residential amenities. Conditions 16, 17 & 18 which relate to provision of visibility splays, vehicular parking and turning areas, and provision of parking facilities for cyclists are all necessary in the interests of highway safety or to promote sustainable modes of transport; I have reworded condition 18 slightly in the interests of precision.
25. Condition 19 which restricts the hours of opening to customers is necessary in the interests safeguarding adjacent residential amenities.
26. Suggested condition 20 relates to the restriction of deliveries of goods or the collection of refuse from the retail unit before 07:30 hours or after 22:00 hours on Mondays to Saturdays, and between 10.00 and 18.00 hours on Sundays, and is considered necessary in the interests of safeguarding adjacent residential amenities. The

appellant argues such a condition is unduly onerous and lacks justification and maintains it is vital that deliveries be allowed from 7:00 in the morning and between 10:00 and 18:00 hours on Sundays and public holidays. It is maintained, due to the size of the proposed store and restricted storage facilities, the ability of the store to be able to receive fresh produce from 7:00 is essential for the commercial convenience operation of the store.

27. My reading of the condition as proposed by the Council does not restrict deliveries on public holidays. As regards the start time for deliveries of 7:30 on Mondays to Saturdays, the Council maintain the condition is considered necessary in the interests of safeguarding adjacent residential amenities; I agree. Such a requirement is not unusual in these types of development; I note the appeal⁸ referred to in support of the appellant's case had a similar condition attached to the permission. Notwithstanding the appellant's arguments related to restricted storage capacity, the logistics of managing vehicle deliveries or replenishing of the stock, these cannot be at the expense of adjacent residential amenities. The rear elevations of dwellings on Aldergrove Place are near to the area in which the delivery vehicles would be manoeuvring, parking and unloading; bearing in mind the proximity of adjacent dwellings, the noise associated with such activities early in the morning are likely to be detrimental to amenities of occupants of those dwellings at a time when local residents would in all likelihood expect it to be quiet. To my mind a 7:30 start time for deliveries and refuse collection is not unreasonable in a built up area where dwellings are nearby, and strikes a reasonable balance between the needs of the business and safeguarding adjacent residential amenities.
28. As regards the second part of the condition relating to restricting deliveries of goods or to the collection of refuse on Sundays, my reading of that part of the condition as worded is that such activities could take place outside of the hours of 10.00 to 18.00, which would result in detriment to adjacent amenities. I agree with the appellant that deliveries/collection of refuse should be allowed between the hours of 10.00 to 18.00 on a Sunday; these hours of operation will safeguard adjacent residential amenities whilst also meeting the reasonable needs of the business. I have reworded the condition accordingly.
29. The Council have confirmed that the obligation set out within the UU submitted with the appeal is satisfactory. I consider that the UU is necessary, is related to the proposed development, and is related in scale and kind, and therefore meets the appropriate tests set out in Section 122(2) of the Community Infrastructure Levy Regulations 2010 and Circular 13/97. Accordingly the obligation set out within the UU should be afforded weight in the determination of the appeal.

Overall Conclusions

30. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.

⁸ Appeal Ref. APP/H6955/A/13/2209711

31. I conclude that the proposed development would not have a harmful impact on highway safety and consequently would not be contrary to, nor undermine policy T8 of the UDP.
32. After taking account of all the evidence before me, and for reasons given above, I therefore conclude that the appeal should be allowed.

Declan Beggan

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be commenced before the expiry of five years from the date of this permission.
2. The development shall only be carried out in strict accordance with the following drawings:
 - i. T29-0312 Revision A: Proposed Site Plan
 - ii. T29-0313: Proposed GA Floor Plan
 - iii. T29-0315: Proposed Elevations – Retail Store
 - iv. T29-0317: Existing & Proposed Section Through the Site
3. No part of the development shall commence until a scheme indicating the detailed layout, design, drainage and construction of the following has been submitted to and approved in writing with the Local Planning Authority:
 - a) Widening/improvements to the existing footways on the corner of B5426 Minera Hall Road including extension to footway along western side of Ruthin Road to proposed splitter island (proposed and existing footways to be 2m wide).
 - b) Provision of 1.4m wide splitter island across A525 Ruthin Road in approximate position of the existing public house car park entrance, providing 2.9m minimum width running lanes.
 - c) Provision of 1.4m wide splitter island across Minera Hall Road junction with Ruthin Road including associated dropped kerbs/tactiles.
 - d) Improvements to kerb radius/footway on south east corner of B5430 Gwernygaseg Road junction.
 - e) Construction of footway alongside public house along Gwernygaseg Road.
 - f) Construction of new car park access and reinstatement of existing access to full height footway construction.
 - g) Re-location of existing light column on corner of proposed car park access.

The details as approved shall be fully implemented prior to first use of the retail store.

4. No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system.
5. No development shall take place until a Service and Delivery Management Plan (SDMP) for both the existing public house and the proposed retail store, to include (but not be limited to) the details of the timing and frequency of deliveries, the type of delivery vehicles to be used, delivery vehicle movements (incorporating staggered deliveries), management of car parking to facilitate the manoeuvring of delivery vehicles and details to control and/or prevent access during non-operational times has been submitted to and approved in writing by the Local Planning Authority. The SDMP as agreed shall be implemented in accordance with the approved details.
6. No part of the development shall commence until a Construction Environment Management Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be implemented in strict accordance with the Construction Environment Management Plan as approved.
7. No development shall take place until samples of the materials to be used in the construction of the external facing and roofing of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
8. No part of the development shall commence until a scheme to deal with potential contamination at the site has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include a phased investigation approach to identify the extent of contamination and any measures required to remediate the site, including post-development monitoring.
9. No part of the development shall be occupied until a Verification Report which demonstrates that the remedial works approved as part of condition no. 8 above have been satisfactorily carried out, has been submitted to and approved in writing by the Local Planning Authority.
10. No development shall take place until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include details of a Travel Plan co-ordinator, staff travel survey, measures to encourage the use of sustainable transport, walking and cycling initiatives, publicity and marketing, setting of targets and monitoring and review of the Travel Plan together with a timetable for the implementation of each of the elements. The Travel Plan shall be implemented in accordance with the approved details and remain operational for the life of the development.
11. No development shall take place until a hard and soft landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall, in respect of hard landscaping, be implemented prior to the first use of the development and, in respect of soft landscaping, within the first planting season

(November to March) or seeding season (April to September) following the first use of the development.

12. The landscaping scheme as carried out in connection with condition no. 11 shall be retained for a minimum of five years. Within this timescale, any planting becoming severely damaged or seriously diseased, or is in poor physiological condition and/or are removed without the written permission of the Local Planning Authority shall be replaced with trees or shrubs of the same species in the next available planting or seeding season.
13. The retail use of the building shall not be used until a 1.2m high fence has been fully erected along the boundary adjacent to Nos 14 - 17 Aldergrove Place, and the fence shall thereafter be permanently retained.
14. The rating level of any noise generated by air handling plant associated with the development shall not exceed the pre-existing background level by more than 5dB(A) at any time. The noise levels shall be determined at the nearest noise sensitive premises and measurements and assessment shall be made in accordance with BS4142:1997 'Method of Rating Industrial Noise Affecting Mixed Residential and Industrial Areas'.
15. No part of the development shall be brought into use until details of all external lighting for the site (including lighting for the shared parking area) has been submitted to and approved in writing by the Local Planning Authority. No part of the site shall thereafter be provided with external lighting other than in accordance with the approved scheme.
16. The retail use hereby approved shall not be used until the new vehicular access provides visibility splays of 2.4m x 43m in both directions as measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1m in height above the level of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.
17. The on-site parking spaces (20 no.) and turning facilities as shown on the approved plan T29-0312 Revision A: Proposed Site Plan shall be fully laid out, surfaced and drained prior to first use of the retail store. The spaces shall thereafter be permanently retained as a shared parking facility in connection with both the retail store and the public house. No segregation of spaces between the uses shall be made, and the spaces and turning facilities shall be maintained in a useable condition for those designated purposes.
18. The cycle parking facilities as shown on the approved plan shall be provided before the retail store is brought into use, and thereafter these facilities shall be maintained for use by customers.
19. The retail unit hereby permitted shall not be open to customers outside the following times: 07.00 hours to 23.00 hours on any day.
20. No deliveries of goods to or collection of refuse from the retail unit hereby approved shall take place outside the hours of 07.30 and 22.00 on Mondays to Saturdays, nor outside of the hours of 10.00 and 18.00 on Sundays, with the exception of delivery of newspapers.