
Appeal Decision

Site visit made on 16 February 2023

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Appeal Ref: APP/Y2003/W/22/3299625

Land to the east of Kingsway Road, Scunthorpe DN16 2AE

- 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 Almscliffe Dhesi Developments, Scunthorpe, Ltd against the decision of North Lincolnshire Council.
 - The application Ref: PA/2021/894 dated 7 May 2021, was refused by notice dated 11 March 2022.
 - The development proposed is the construction of two retail units and one drive-thru unit (all Use Class E) with associated access, parking, drainage and landscaping.
-

Decision

1. The appeal is allowed and planning permission is granted for the construction of two retail units and one drive-thru unit (all Use Class E) with associated access, parking, drainage and landscaping at land to the east of Kingsway Road, Scunthorpe DN16 2AE in accordance with the terms of the application, Ref: PA/2021/894, dated 7 May 2021, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Almscliffe Dhesi Developments, Scunthorpe, Ltd against North Lincolnshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. Kingsway House is included in the site address details that are set out on the planning application form and the decision notice. I have excluded it from those details in my banner heading and the decision paragraph above because it is no longer present on the appeal site.
4. The planning application submission included a streetscape elevations drawing. As it contains street elements apart from the proposal and as one of the elevations is unscaled, I have treated it on an indicative basis.
5. The appellant submitted an arboricultural report and two retail planning reports with the appeal. They are of relevance to the matters of dispute. The Council and interested parties have had the opportunity to comment on them during the course of the usual appeal timetable. I have therefore had regard to these documents in my decision.

6. The appellant also submitted an agreement under Section 106 of the Town and Country Planning Act 1990 (Section 106 Agreement) during the appeal. The Council also commented on this document and I have taken it into consideration.

Main Issues

7. The main issues are whether the proposal would (i) be in a suitable location with regard to development plan policy; (ii) the effect on the amenity value of trees, including those which are protected; (iii) the effect on the vitality and viability of Scunthorpe Town Centre, Ashby High Street District Centre and Brumby Corner; and (iv) if there is harm, whether this is outweighed by the benefits of the proposal.

Reasons

Suitable Location with regard to Development Plan Policy

8. The appeal site comprises an area of open land that lies between Kingsway, Ashby Road and Lloyds Avenue. The site also contains a number of trees. It is for the most part enclosed by a low boundary wall and contains a small services building along part of its western boundary, where there are also some bollards. It is understood that it formerly contained a building known as Kingsway House, but this was demolished some time ago. The immediate surroundings to the site are predominantly residential, apart from a public house at the corner of Ashby Road and Kingsway. Central Park lies on the opposite side of Kingsway.
9. The Council's Housing and Employment Land Allocations Development Plan Document (2016) (Housing and Employment Land Allocations DPD) includes the sites that the Council has allocated for future housing development. The site is allocated as a proposed housing site (ref: SCUH-15) with a capacity of 16 dwellings. The Housing and Employment Land Allocations DPD states that the site is available for development and the surrounding residential and close proximity to local services makes this a suitable site for residential development. That was at the time of the adoption of that development plan.
10. This position has changed in as far as the emerging North Lincolnshire Local Plan is not proposing to carry this allocation forward. I have also been referred to where a housing developer has stated that the site is not likely to be developed for residential development, and there has not been interest from the private sector.
11. The site however remains as an allocated housing site under the development plan, even if that might change when the Council's emerging Local Plan is adopted. The proposal would not though be for a housing development. It would be used for purposes specified in Class E (Commercial, business and service)¹. As such, it would not accord with the development plan allocation.
12. I conclude that the proposal would not be in a suitable location with regard to Development Plan policy because it would conflict with the allocation of the site for housing (ref: SCUH-15) under the Housing and Employment Land Allocations DPD.

¹ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

13. I deal with the weight to be attached to this conflict in light of the Council's intention to deallocate the site later in my decision.

Trees

14. The trees on the site are predominantly limes. These are the subject of a Tree Preservation Order² (TPO). They have significant amenity value where they extend around the perimeter of the site. They line the views along each respective side of the site and are dominant in view from public vantage points. None of these trees are proposed to be removed and canopy reduction works would likely assist in the long term health of these trees in as far as their management.
15. In order to avoid damage to where hardstanding and landscaping is proposed in the Root Protection Areas (RPAs) of the trees to be retained, a 'no dig' construction method is proposed in most cases. This would be in order to prevent root severance and compaction, amongst other unsuitable effects on the trees that might jeopardise their amenity value.
16. The Council has pointed out that 'no dig' construction would not extend to all parts of the proposal that would lie within the RPAs. In particular the proposed building nearest Kingsway to the north would be close to one of the protected limes and so it is intended this would be dealt with through canopy reduction and pruning. Extending the use of 'no-dig' in the RPA of the tree closest to the proposed dedicated pedestrian access and to the part of the street tree within the site along Lloyds Avenue can be ably addressed through the imposition of a planning condition.
17. Two of the lime trees that are proposed to be removed are set in from the site boundaries. The appellant's tree survey considers these trees are in Category C (low quality) and U (unsuitable for retention). There is not substantive evidence to the contrary. They also have less amenity value because they are set away from the boundaries and so are not viewed from either the streetscene or the area to the same degree as the trees around the site's perimeter. Their removal would not be unacceptable. Where other trees are shown to be removed, they are not the subject of the TPO.
18. The proposed scheme of landscaping and tree planting also shows new trees and a new section of native hedge. When these measures are also considered, overall, the effect on the tree value of the site, both in relation to amenity and health, would not count against the proposal.
19. I conclude that the proposal would not have an unacceptable effect on the amenity value of the trees, including those which are protected. As such, it would comply with saved Policy LC12 of the North Lincolnshire Local Plan (2003) (Local Plan) and Policy CS16 of the North Lincolnshire Local Development Framework Core Strategy (2011) where they set out that proposals will wherever possible ensure the retention of trees, give particular regard to the amenity value of trees within built up areas, concern landscaping and tree and hedgerow planting scheme requirements, and require the protection of trees, amongst other considerations.

² Tree Preservation (Kingsway, Scunthorpe) Order 2011

Vitality and Viability

20. As the proposal would comprise retail and coffee shop type units, it concerns main town centre uses, as is defined by the glossary within the National Planning Policy Framework (Framework). The site itself is in a location which is 'out of centre'. The nearest defined centres under the development plan are Scunthorpe Town Centre and Ashby High Street District Centre. Considerably closer to the site is Brumby Corner, a Small Local Centre, which lies around 300 metres south of the site.
21. Saved Policy S8 of the Local Plan sets out a number of criteria for out of centre retail and leisure development. Whilst it requires a clear need to be demonstrated, this has long since not been a requirement of national planning policy. This is notwithstanding that the roadside location of the proposal in any event relates to an identified need by way of that from passing traffic, primarily.
22. Regarding the remaining criteria, there is not particular evidence before me suggesting there would be cumulative impacts and in the absence of a locally set threshold, the proposal is well below the 2,500 square metre default set by the Framework for requiring an impact assessment. In respect of accessibility by a choice of means of transport, bus routes pass the site and it is also easily accessible by walking. There are also marked cycle lanes in the immediate vicinity.
23. The criterion of most relevance as regards the vitality and viability of centres for both saved Policy S8 and the Framework is the sequential test. The sequence for the location of main town centres uses is town centre sites first, then edge of centre sites second and out of centre sites third. Out of centre sites should be considered only if suitable sites in a centre or on the edge of a centre are not available.
24. The appellant is not though required to disaggregate the proposal in order to try to find town centre and edge of centre sites, although the Framework does require some flexibility to be shown. As it is a fairly modest development by virtue of the proposed floorspace, there is limited merit in attempting to split the proposal up. The appellant has applied some flexibility as regards the site area, based on what is proposed, to between 0.36 to 0.44 hectares (ha). The appeal site is itself approximately 0.40 ha. However, where there are larger sites, consideration still needs to be given to whether the proposal could reasonably occupy part of it
25. The sites themselves are identified in the appellant's sequential assessments, which I have considered along with the Council's views on them. Turning first to Scunthorpe town centre, there are a number of single retail unit sites that simply would be too small to accommodate the proposal. The three car park sites that are identified are in active use, whether for the public or otherwise, and there is not substantive evidence that even some of the parking in the larger site is surplus to requirements. As a consequence, they would not be available.
26. The former indoor market site has received planning permission for a residential and office development. At the time of my site visit, building works were underway on this site. It would not therefore be available. Of the edge of centre sites, only one would be of a size to accommodate the proposal,

although it is not evident how the proposal may fit in with a broader redevelopment of the site. In overall terms, it would not be available.

27. With regard to Ashby High Street District Centre, a number of the identified sites are too small. In relation to the remaining site, the Council has stated that the Ashby Market site now has a residential permission. None of these sites are therefore available. There are no edge of centre sites, in particular as residential areas closely bound this centre.
28. As Brumby Corner is a modest sized centre, there are not sites in it or on the edge that would be suitable or available for the proposal. In taking these considerations together for the three centres, the proposal passes the sequential test.
29. The Framework also identifies the importance of retail facilities in relation to meeting a community's ability to meet its day to day needs, and that such facilities are to be retained for the benefit of the community. In this case, this is of relevance to Bromby Corner in particular as there is a convenience store which contains a Post Office. The proposal would also accommodate a convenience store.
30. However, there is not compelling evidence that the proposal would lead to diversion of trade from this store which may in turn lead to the closure of the Post Office. The proposal is geared to attracting passing roadside trade. Kingsway is a major route in particular which enables traffic to pass from one side of Scunthorpe to another. As such, the site is not in an untypical location for this type of proposal.
31. In contrast, Brumby Corner's function is more geared up to attracting local trade because it is more surrounded by residential areas. It contains some parking, so it would not be evident why customers would by-pass the local centre and use the proposal, and even less so for local residents who may visit this local centre on foot. While I would accept that local residents that live close to the proposal would likely use it rather than Brumby Corner, I am not persuaded this would jeopardise the future of the convenience store and Post Office, based on the evidence before me.
32. I conclude that the proposal would not have an unacceptable effect on the vitality and viability of Scunthorpe Town Centre, Ashby High Street District Centre and Brumby Corner. Hence, it would comply with saved Policy S8 in relation to the criteria it applies concerning out-of-centre retail and leisure development, including the application of the sequential test, amongst the other considerations that it sets out.

Benefits

33. The proposal would make for the effective use of land under the Framework, given that it previously contained a building and with its location well within the urban area of Scunthorpe. It would also provide for broader consumer choice for a wide variety of users, as well as a greater range of such local facilities, as a social benefit.
34. Moreover, it would provide an opportunity for inward investment into Scunthorpe. The evidence that the appellant submitted with the application states that the proposal would facilitate the provision of up to 50 full time

equivalent job opportunities. This would assist in terms of employment and the need to support economic growth.

35. The employment that would be created would relate to construction and then the operation of the proposal. In addition, there would be economic benefits through the maintenance and ongoing servicing, including for suppliers.
36. While the appellant considers that the site's good accessibility by modes of transport other than the car is a benefit, I consider this is a neutral matter. It is still a relevant policy requirement under saved Policy S8 and the Framework seeks that all development pursues opportunities to promote walking, cycling and public transport use. The proposal would also clearly seek to utilise its roadside location in order to generate trade from road users, and so would not promote non-car modes of transport in this regard, even though these modes would be able to be utilised.

Other Matters

Highway Safety and Section 106 Agreement

37. Both Kingsway and Ashby Road are busy thoroughfares and meet at a roundabout adjacent to the site. Lloyds Avenue meets Ashby Road at a signalised traffic junction and there are the bus stops in close vicinity. Given the road infrastructure that would serve the site, it would ably accommodate the likely traffic generated by the proposal, including at peak times without having a severe impact. This is on the basis that the signalised traffic junction would be upgraded in order to accommodate the traffic that would be generated along these busy routes, as well as this measure potentially limiting disruption at the bus stops as traffic would flow more smoothly.
38. The proposal would also provide for a commensurate level of off-street car parking, given that it is likely that much of the trade would come from passing traffic. However, cycle parking is also proposed to be provided. In order to limit the potential for overspill car parking onto Lloyds Avenue, provision will be made for a Traffic Regulation Order (TRO) to be facilitated and extended. The proposal would also provide for pedestrian access, and there would be dedicated access off Ashby Road. In taking these considerations together, the proposal would not have an unacceptable effect on highway safety.
39. The obligations in the Section 106 Agreement concern the signalised traffic junction upgrade and the TRO. Accordingly, it has been demonstrated that the obligations are necessary in order to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. They accord with the tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended, 2019). I have taken them into account in my decision.

Other Considerations

40. With regard to the potential effects on living conditions, with the proximity to residential properties, the hours of operation would be limited so that night time hours would be restricted, as would be the times when heavy goods vehicles (HGVs) would be on site. Noise from plant and machinery would also be restricted, whilst construction effects can be the subject of a management

plan. Such matters can be addressed through the imposition of planning conditions.

41. Issues over litter and vermin are matters for the appellant and/or the site operators, and there is not a particular reason why this would not be ably managed. A similar situation arises in relation to anti-social behaviour, where the police would also have a regulatory role. Further controls through planning would not therefore be reasonable and necessary.
42. The two proposed buildings would be of moderate height compared even to the houses in their vicinity and would be well spaced across the site. In addition, some screening would be afforded by the tree coverage around the site's perimeter and the proposed landscaping would maintain elements of the site's current open character. While indicative signage locations are shown, deciding on the proposed signage will be a matter for the Council in determining subsequent advertisement consent applications, if express consent is required. On that basis, the proposal would not be unacceptable in character and appearance terms.
43. There is not compelling evidence that the site holds particular ecological interest and biodiversity net gain measures can be provided through a planning condition. The same applies by way of a condition concerning a suitable drainage scheme. The effect on property values is not a matter for my consideration.

Planning Balance

44. The benefits of the proposal concern the social and in particular the economic matters resulting from the inward investment and economic opportunities, including employment during both construction and operation. This would be in accordance with the identified need under the Framework to support economic growth and productivity. This attracts significant weight in favour of the proposal.
45. The proposal would not be in a suitable location with regard to development plan policy because it would conflict with the allocation of the site for housing under the Housing and Employment Land Allocations DPD. As a consequence, I find that it would not comply with the development plan as a whole, because an allocated housing site would be lost. The Council has also confirmed that it cannot demonstrate a 5 year housing land supply for the purposes of the Framework and the proposal would reduce the supply of housing land. I would however accept this harm is tempered somewhat because the Council is proposing to deallocate the site. Overall, this harm attracts moderate weight. All other matters attract neutral weight.
46. When taken together, the benefits would outweigh the harm and this supports the grant of planning permission. This is a case where there are material considerations that indicate that the proposal which is the subject of the appeal should be determined otherwise than in accordance with the development plan.

Conditions

47. In addition to the timescale for implementation, I have imposed a condition concerning the approved plans which show the proposal, excluding the indicative plan, for the purposes of certainty. This also excludes landscaping and tree plans as they are more appropriately dealt with through the respective

conditions which deal with these considerations. I have also imposed a condition by way of the implementation of the external finishes, as shown on the approved plans. This is in order to protect the character and appearance of the area.

48. In the interests of highway safety, conditions are imposed with regard to the implementation of access and parking as shown on the approved plan, proposed off-site highway works, a delivery and servicing plan and a traffic management plan during the construction phase.
49. I have also imposed a condition in respect of land contamination, for the reason of protecting public health. Conditions are also imposed in relation to the noise limit of plant and machinery, opening and delivery hours and the hours of HGVs on site. These are imposed for the reason of protecting the living conditions of the occupiers of the nearest residential properties.
50. For the same reason, a condition is imposed in relation to a construction management plan. It incorporates details of the construction hours. A biodiversity management plan condition is imposed, including biodiversity net gain measures, amongst other matters, as well as its implementation. This is imposed for ecological reasons.
51. Conditions are also imposed concerning a drainage scheme and its implementation, and preventing surface water run-off. These are imposed in the interests of providing satisfactory drainage and minimising flood risk. A condition with regard to the implementation of the proposed landscaping and tree planting is also imposed, in the interests of protecting both the amenity value of the trees and the character and appearance of the area. A tree protection condition is also imposed in the interests of protecting the amenity value of the trees.
52. Where conditions are pre-commencement, there is agreement by the appellant. 'Tailpiece' phrases have also been excluded from a number of the conditions as they introduce uncertainty over what is permitted, and so are not reasonable. Where I have altered the wording of the remainder of the conditions put forward by the Council, I have done so in the interests of precision and without changing their overall meaning.

Conclusion

53. For the reasons set out above and having regard to all matters raised, the appeal should be allowed, subject to the conditions.

Darren Hendley

INSPECTOR

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: 1914 PL 105 Proposed Site Plan, 1914 PL 120 Unit 1&2 Floor Plan, 1914 PL 121 Unit 1&2 Roof Plan, 1914 PL 122 Unit 1&2 Proposed Elevations 1 & 2, 1914 PL 123 Unit 1&2 Proposed Elevations 3 & 4, 1914 PL 125 Proposed Unit 3 Ground Floor Plan, 1914 PL 126 Proposed Unit 3 Roof Plan, 1914 PL 127 Proposed Unit 3 Elevations 1 & 2, 1914 PL 128 Proposed Unit 3 Elevations 3 & 4.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan nos. 1914 PL 122, 1914 PL 123, 1914 PL 127, 1914 PL 128.
- 4) The development hereby permitted shall not be brought into use until space has been laid out within the site in accordance with plan no. 1914 PL 105 for the access road to the service and customer parking area, the pedestrian accesses to the site, the loading, off-loading and turning areas for all vehicles, the parking spaces and access aisles (including surface markings) and the cycle parking spaces and that space shall thereafter be retained for those purposes.
- 5) The development hereby permitted shall not be brought into use until the proposed access arrangement within the highway has been implemented in accordance with details that have been previously submitted to and approved in writing by the Local Planning Authority.
- 6) The development hereby permitted shall not be brought into use until the provision of 'Keep Clear' markings on Lloyds Avenue and dropped/tactile crossing points at Lloyds Avenue/Kingsway Residential Road have been completed in accordance with the details set out in the Transport Assessment dated May 2021.
- 7) The development hereby permitted shall only be brought into use in accordance with a delivery and servicing management plan (including delivery times) which has previously been submitted to and agreed in writing by the Local Planning Authority. The measures contained within the approved Plan shall thereafter be retained.
- 8) No development shall take place until a Construction Phase Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - i) a pre/post construction condition survey of the carriageway to identify any defects and how they will be rectified;
 - ii) all associated traffic movements, including delivery vehicles and staff/construction movements;
 - iii) any abnormal load movements;
 - iv) contractor parking and welfare facilities;
 - v) storage of materials; and
 - vi) traffic management requirements, including the means of controlling the deposition of mud onto the adjacent highway, along with appropriate methods of cleaning the highway.

The approved Construction Phase Traffic Management Plan shall be adhered to throughout the construction period for the development.

- 9) Any odorous, discoloured or otherwise visually contaminated material that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.
- 10) No fixed plant and/or machinery shall come into operation until details of the fixed plant and machinery serving the development hereby permitted, and any mitigation measures to achieve this condition, have been submitted to and approved in writing by the Local Planning Authority. The total cumulative rating level of the noise emitted from the fixed plant shall not exceed existing background levels as determined in report reference NJD20-0115-001R Dated April 2021. The noise levels shall be determined by measurement or calculation at the nearest noise sensitive premises. The measurements and assessment shall be made according to BS4142:2014 + A1:2019.
- 11) Opening and delivery hours for the development hereby permitted shall be restricted to between the hours of 6am to 10pm Monday to Sunday, including public and bank holidays.
- 12) No Heavy Goods Vehicles shall be permitted on the site outside the hours of 7am to 7pm Monday to Sunday, including public and bank holidays.
- 13) No development shall take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall provide for:

Noise and Vibration:

- i) the works, and the method by which they are to be carried out;
- ii) the noise and vibration attenuation measures to be taken to minimise noise and vibration resulting from the works, including any noise limits;
- iii) a scheme for monitoring the noise and vibration during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures;

Light:

- iv) specified locations for contractors' compounds and materials storage areas;
- v) areas where lighting will be required for health and safety purposes;
- vi) location of potential temporary floodlights;
- vii) identification of sensitive receptors likely to be impacted upon by light nuisance;
- viii) proposed methods of mitigation against potential light nuisance, including potential glare and light spill, on sensitive receptors;

Dust:

- ix) site dust monitoring, recording and complaint investigation procedures;
- x) identification of receptors and the related risk of dust impact at all phases of the development;
- xi) provision of water to the site;
- xii) dust mitigation techniques at all stages of development;
- xiii) prevention of dust trackout;
- xiv) communication with residents and other receptors;
- xv) a commitment to cease the relevant operation if unacceptable levels of dust emissions are identified either by regular site monitoring or by the local authority;
- xvi) a 'no burning of waste' policy; and

Construction Hours:

- xvii) That construction hours shall be restricted to between the hours of 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays. No construction operations shall take place on Sundays, or Public or Bank Holidays.

The approved Construction Environmental Management Plan shall be adhered to throughout the construction period for the development.

- 14) Within three months of the commencement of the development hereby permitted, a biodiversity metric assessment and biodiversity management plan shall be submitted to the Local Planning Authority for approval in writing. The document shall include:
- i) an assessment of biodiversity loss based on the habitat and hedgerow baseline from the submitted drawing ref: 1914 PL 101 Existing Site Plan;
 - ii) details of measures required to provide at least 1% biodiversity net gain in accordance with the Defra Small Sites metric, either on site or, to the satisfaction of the Local Planning Authority, off-site;
 - iii) details of bat boxes and nest boxes to be installed;
 - iv) details of trees, shrubs and plants for pollinators to be planted;
 - v) proposed timings for the above works in relation to the completion of the buildings.

The biodiversity management plan shall be carried out in accordance with the approved details and timings, and the approved features shall be retained thereafter. The development hereby permitted shall not be brought into use until a report has been submitted to the Local Planning Authority, providing evidence of compliance with the biodiversity management plan.

- 15) The development hereby permitted shall not commence until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. The development lies within an area identified as at risk of localised flooding and therefore suitable mitigation measures need to be included in the proposed design.

The drainage scheme shall demonstrate that surface water run-off generated up to and including the 1 in 100-year critical storm (including an allowance for climate change which should be based on the current national guidance) will not exceed the run-off from the existing site. It shall also include details of how the resulting completed scheme is to be maintained and managed for the lifetime of the development so that flood risk, both on and off the site, is not increased. SuDS must be considered. Reference should be made to North Lincolnshire Council's SuDS and Flood Risk Guidance Document.

The drainage scheme shall be implemented in accordance with the approved submitted details required by this condition, completed prior to the occupation of any building hereby permitted, and thereafter retained and maintained in accordance with the scheme for the life of the development.

- 16) No above-ground works of the development hereby permitted shall take place until details showing an effective method of preventing surface water run-off from the highway onto the developed site and from the site onto the public highway have been submitted to and approved in writing by the Local Planning Authority. These approved details shall be implemented prior to the access and the parking facilities being brought into use and thereafter so retained.
- 17) The scheme of landscaping and tree planting shown on drawings 812/LA1 and 812/LA2 and the associated Landscape Design Description, Planting Schedule and Soft Landscape Specification shall be carried out in its entirety within a period of 12 months beginning with the date on which development is commenced. Any trees, shrubs or bushes removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees, shrubs or bushes of similar size and species to those originally required to be planted unless the Local Planning Authority have given written consent to any variation.
- 18) The development hereby permitted shall be carried out in strict accordance with the method and extent of tree protection measures detailed in the Arboricultural Impact Assessment produced by Weddle Landscape Design, dated January 2021, including the method and extent of tree protection, works to existing trees and no dig construction areas identified on drawing KWS 03 except in respect of trees T7 and T12.

No development shall take place until details of the method and extent of tree protection measures for trees T7 and T12 has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with these details.

The tree protection measures shall be retained for the duration of the construction works. Within the areas so fenced off, the existing ground level shall be neither raised nor lowered (except as may be approved by the local planning authority as part of the development) and no materials, equipment, machinery or temporary buildings or surplus soil shall be placed or stored thereon. If any trenches for services are required in the fenced-off areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5 centimetres or more shall be left unsevered.

Costs Decision

Site visit made on 16 February 2023

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Costs application in relation to Appeal Ref: APP/Y2003/W/22/3299625
Land to the east of Kingsway Road, Scunthorpe DN16 2AE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Almscliffe Dhesi Developments, Scunthorpe, Ltd for a full award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of planning permission for the construction of two retail units and one drive-thru unit (all Use Class E) with associated access, parking, drainage and landscaping.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that it has incurred significant additional costs as a result of the Council's refusal of the planning application despite what the applicant views as clear planning justification for approval of the application.
4. The planning application was refused against the officer recommendation. A planning decision is one though of a matter of judgment and the Council Members are entitled not to accept the professional advice of their officers so long as a case can be made for a contrary view. The Council's decision was based on the effect on the amenity value of trees, including those which are protected, and the effect on the vitality and viability of Scunthorpe Town Centre, Ashby High Street District Centre and Brumby Corner. These are relevant planning considerations in this case.
5. The reasons for refusal are themselves precise, specific and relevant to the planning application, clearly explaining on what grounds the Council considered the proposal to be unacceptable. The development plan policies cited are also pertinent to the reasons for refusal.
6. In addition, the Council's appeal statement amplifies the reasons for refusal by way of commenting on the applicant's case. While I disagree with the Council's decision, this is not a case where a contrary view could not be taken. The proposal would involve both the loss of protected trees and town centre uses in

a location which is out of centre. Furthermore, approving the application would have involved the Council taking a decision which is contrary to the development plan. To say there is clear planning justification for approval of the application is not therefore reflective of the main issues.

7. Although I note comments in the applicant's statement of case over when clarification was sought at the Planning Committee as regards the reasons for refusal, the Committee minutes adequately and clearly set out the Member's concerns. This does not amount to unreasonable behaviour and actions at the time of the planning application, in determining this application for costs.
8. I have also considered whether a partial award should be made, but I reach the same overall conclusion. The Council has provided sufficient evidence across all the grounds and so such an award of costs is also not justified.
9. As I have not found unreasonable behaviour, I do not have reason to consider whether unnecessary or wasted expense has been incurred. This is notwithstanding that some of the costs that have been put forward do not concern the appeal proceedings.

Conclusion

10. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR