



Appeal Decision

Site visit made on 23 June 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2022

Appeal Ref: APP/E2340/W/21/3289117

Land at Whitewalls Drive, Colne

- 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 c/o Applicant Monte Blackburn Limited against the decision of Pendle Borough Council.
 - The application Ref 21/0583/FUL, dated 12 July 2021, was refused by notice dated 11 October 2021.
 - The development proposed is Re-development of the site comprising the erection of roadside services including a Petrol Filling Station with ancillary convenience floor space and drive-thru coffee unit (Sui Generis) and Erection of two industrial units (Use Class B2/B8), with associated infrastructure, access, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for re-development of the site comprising the erection of roadside services including a petrol filling station with ancillary convenience floor space and drive-thru coffee unit (Sui Generis) and erection of two industrial units (Use Class B2/B8), with associated infrastructure, access, car parking and landscaping at Land at Whitewalls Drive, Colne, in accordance with the terms of the application, Ref 21/0583/FUL, dated 12 July 2021 subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Monte Blackburn Limited against Pendle Borough Council. That is the subject of a separate decision.

Preliminary Matters

3. Whilst the majority of the appeal site lies within the settlement boundary, one industrial unit (Unit B) would be located outside of that boundary; however, this does not form part of the reasons for refusal. Policy SDP4 of the Pendle Local Plan 2011 – 2030 (2015) (the Local Plan) states that in line with Policy SDP2, small scale employment development outside a settlement boundary will be considered where it can be shown to be in a sustainable location and meet specific, identified local needs. However, the PLP pre-dates the publication of the most recent revision of the Framework. Nevertheless, the Framework is clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework.
4. Paragraph 174 of the Framework recognises the intrinsic character and beauty of the countryside, whilst Paragraph 85 stipulates that new development to

meet business needs may need to be located adjacent to or beyond existing settlements. Sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist. Although the Framework does not rule out the use of settlement boundaries, and seeks to preserve countryside character, the approach in the Local Plan takes a more restrictive approach to new employment development than is expressly required by the Framework. This limits the weight I can give to settlement boundaries with regard to Policy SDP4 in the context of this appeal. As such, on the basis of what is before me, I see no reason to find harm with regard to the location of Unit B outside of the settlement boundary.

Main Issues

5. The main issues are:

- The effect of the proposed development on the character and appearance of the area; and
- The effect of the proposed development on the vitality of Colne town centre.

Reasons

Character and Appearance

6. The appeal site is a large grassed field located adjacent to a roundabout at the junction of Whitewalls Drive (A6068) with the M65 motorway. The site is bounded by the M65 to the north, the A6068 dual carriageway to the east and Greenfield Road to the south. The site tapers to the west where it bounds an area of woodland to the north of Greenfield Road. Greenfield Road is a reasonably minor, predominantly single track, road that is bounded to the south by the Greenfield Road Local Nature Reserve. To the north of Greenfield Road there is a row of mature trees growing on the edge of the appeal site and further along the road, away from the junction with the A6068 is a row of terraced dwellings with a detached dwelling beyond. The gardens of these properties back onto the appeal site.
7. The appeal site is bounded to the north by a reasonably dense hedge which predominantly limits views into the site from the M65. A more irregular hedge is located to the eastern boundary which limits views into the site from the northern part of Whitewalls Drive. However, the hedge is predominantly absent along the boundary with Greenfield Road, particularly close to the junction with Whitewalls Drive and consequently views into the site are possible when travelling north along the dual carriageway here. The site is also visible when travelling towards the dwellings along Greenfield Road, which is higher than the appeal site, although views are interrupted by the aforementioned mature trees.
8. The appeal site has a natural character consisting of grassland and enclosed by mature hedgerows and trees. The site is located within an area on the urban-rural fringe with a somewhat verdant character. The approach to the site along Whitewalls Drive from the junction with the A56 to the south comprises a mix of industrial, warehouse and retail uses interspersed with dense vegetation. The scale of buildings is mixed although some are reasonably large and extend to two storeys in height.

9. The approach along the M65 is wooded with reasonably mature tree growth to both sides. The appeal site forms part of this wooded approach to the roundabout with the A6068. The approach towards the site along the Vivary Way dual carriageway from the east is dominated by the large Boundary Mill retail outlet and its extensive car parking. This is set back from the roundabout behind a two storey restaurant building. However, a tall sign adjacent to the roundabout indicates the presence of the retail facility.
10. Consequently, having regard to the above, whilst the appeal site has a natural character, it is located in an area where industrial and retail uses are prevalent. These often include large buildings, notwithstanding that they are typically screened, at least in part, by vegetation.
11. The proposed development comprises of two distinct elements. A filling station with convenience retail floor space and a separate drive through café are to be located in the eastern part of the site close to the A6086. Both buildings are reasonably low in height. Further to the west it is proposed to site the two industrial units. These buildings are reasonably tall with the largest building, which also occupies a considerable footprint, extending to 11.5 metres in height. The smaller building which would be sited to the north western part of the site would be 9.5 metres in height.
12. Policies SDP1 and SDP2 of the Local Plan set out the spatial principles for development in the Borough. These stipulate that the majority of the development should be within the M65 corridor and within the Key Service Centres, which include Colne. Lying adjacent to the M65 and predominantly within the settlement boundary of Colne, as defined in the Local Plan, the appeal site meets the spatial requirements of these policies.
13. Local Plan Policies ENV1 and ENV2 state that, amongst other things, development proposals should, wherever possible, aim to safeguard or enhance the landscape character of the area and comprise high quality design.
14. The extensive tree growth along the northern boundary of the site would be retained and enhanced by the proposed landscape planting, which would retain the wooded approach to the roundabout referred to above. The proposed development would therefore be unlikely to be prominent from the M65 when the trees are in leaf. It would be more visible at times when they are not, however, given that this is a motorway, views would, in all likelihood, be fleeting.
15. The irregular hedgerow growing along the eastern boundary with the A6068 would be predominantly removed, up to a point close to the roundabout. However, this is proposed to be replaced with a new planted native hedgerow with regular standard trees. This would provide a more consistent boundary that would be reflective of the verdant character of the area although I accept this would inevitably take time to establish. The hedgerow would form part of a wider landscaping scheme that proposes the planting of a significant number of trees within the site. Furthermore, there is existing vegetation within the highway verge close to the roundabout which is not intended to be removed, this would provide some immediate screening from views in the vicinity of the roundabout. The proposed hedgerow with tree planting would continue around the northern side of the access road enclosing the development and would screen the car park associated with the proposed coffee unit.

16. The area between the development and the boundary of the appeal site with Greenfield Road would become a landscape buffer with woodland planting including larger species of trees. This would provide a transition from the development to the nature reserve on the opposite side of Greenfield Road and would complement the large trees that are proposed to be retained. The site would be visible for those walking to the nature reserve along Greenfield Road however due to the topography and dense vegetation, views of the development are not likely to be prominent from within the nature reserve.
17. Nevertheless, the creation of a new access here would be an incursion into the wooded character of the area, whilst the presence of the proposed buildings would inevitably urbanise the appeal site. However, the proposed development would not appear out of context here, owing to the site's position in the urban-rural fringe, bounded by two major roads and close to other industrial and retail development. The retention of the majority of the healthy and high quality trees and the provision of further planting in the form of an extensive landscaping scheme would help to retain the wooded character of the area.
18. Furthermore, the landscape is not subject to any formal protection, nor does it lie within the Green Belt. Indeed, in coming to my decision I have had regard to the majority of the site's inclusion within the development limits for Colne.
19. For the above reasons I therefore conclude that the proposal would preserve the character and appearance of the area and would therefore not represent a conflict with Policies ENV1 and ENV2 of the Local Plan. There would also be no conflict with Framework paragraph 134 which seeks to ensure proposals provide high quality design.

Vitality

20. Framework paragraph 87 sets out that a sequential test should be applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.
21. The Council considers that the proposed filling station with its convenience retail and the drive through coffee unit to be Main Town Centre Uses in accordance with the Glossary to the Framework. As the appeal site is not within a town centre, the appellant has carried out a sequential test to support the application at the appeal site in line with paragraph 87 of the Framework.
22. Policy WRK4 of the Local Plan requires applications for new retail development to follow the approach for site selection set out in the Framework including the sequential and impact test. The policy states that retail proposals on edge-of-centre or out-of-centre sites will generally be resisted.
23. However, as is noted by the Inspector at an appeal case referenced by both parties¹, the purpose of the sequential test is to demonstrate that there are no alternative sites within a town centre or edge of centre locations. The evidence before me indicates that the primary purpose of the development (putting the industrial units to one side) is to provide roadside services for motorists owing to the site's position at the end of a major transport hub which links Colne to

¹APP/C3105/W/16/3151655

neighbouring east Lancashire urban areas as well as Preston and Manchester. By definition, such a use is unlikely to be located within a town centre. Nevertheless, the Planning Practice Guidance (PPG) states that the use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations.

24. The sequential test includes details of trading characteristics and sets out the need for a prominent/visible roadside presence on an arterial route in order to benefit from passing trade as well as being sited close to existing employment uses. On this basis I am persuaded that there are specific locational requirements for the proposed scheme and that this constitutes robust justification for siting the development at the appeal site as set out in the PPG. Given that the sequential test concludes that there are no suitable locations meeting the above requirements within the town centre or edge of centre, I am satisfied that the submission meets the requirements of the sequential test in accordance with the Framework and Policy WRK4. This is supported by the conclusions of the Council's consultants.
25. The Council states that one of the sites that was discounted in Nelson has now been formally put on the market and is now available. However no further information has been provided and given that none of the sites identified were found to be suitable for the proposed development I am satisfied that this would not affect my above conclusions.
26. Nevertheless, the Council considers that the proposal would amount to an unacceptable impact on Colne Town Centre. The appellant estimates that 40% of trade will be drawn from outside of the area and 60% will be diverted from existing destinations in the local area. Of this, 30% will be diverted from existing retail stores surrounding the appeal site and those located within Colne town centre.
27. The Council has provided figures for the number of commuters from Pendle to Burnley. From this it argues that the road network is not used by those passing through the area, instead it is used by people travelling in the main to work and home. On this basis, the Council contends that in contrast to the appellant's estimates, that the diversion of trade from existing stores in the town centre will likely be as high as 80%. However, this assumes no loss of trade by the existing large supermarkets in the vicinity, including the nearby Asda. In my view, existing commuters in private cars travelling along this road network are more likely to use these supermarkets for convenience shopping than shops in the town centre, given their comparative accessibility.
28. I am therefore not convinced by the Council's estimates in this regard. Given the anticipated use as a roadside services, adjacent to a motorway and wider arterial road network linking Yorkshire with East Lancashire I am more persuaded by the appellant's lower figures.
29. Furthermore, the appellant has provided average transaction data from existing drive through Starbucks at Appendix H of the Statement of Case which demonstrates that on average, approximately half the customers continued their journeys without stopping and approximately three quarters of visitors did not sit in at the café. This reinforces my above conclusions. Whilst I accept that the health of the town centre of Colne has been adversely affected by Covid-19 pandemic, I am satisfied that the appeal proposal would predominantly attract

motorists using the road network and would not draw a significant level of trade away from the Colne town centre.

30. For the above reasons I conclude that the proposed development would not result in significant harm to the vitality of the Colne town centre. There would therefore be no conflict with Policy WRK4 of the Local Plan or Framework paragraph 91 which seeks to ensure new developments avoid significant adverse effect on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment.

Other Matters

31. I have taken careful account of all the representations before me, including in respect of traffic generation, flood risk, highway safety, effects on property values, potential for anti-social behaviour, litter, light pollution and the need for a filling station or a coffee shop (given that there are others nearby and that the sale of petrol and diesel vehicles is intended to be phased out by 2030).
32. The area around the appeal site lies within an area characterised by a mix of uses, and there is nothing before me to indicate that the volume of traffic that would be generated, or site access, would likely lead to adverse effects in that context. I also note that the Highway Authority raised no objections in that regard. With regard to flood risk, the application includes a Flood Risk Assessment and a Foul Drainage Statement which indicate that the site can be adequately serviced without adversely impacting on the local infrastructure. In this regard I note that the Environment Agency considers that issues of flood risk and pollution could adequately be addressed by conditions.
33. Effects on property values are multi-faceted, and essentially outside planning considerations. Likewise, provision exists outside of planning to deal with anti-social behaviour. There is insufficient evidence before me to enable me to conclude that litter would be a problem of such magnitude as to warrant dismissal of the appeal.
34. The proposal would retain existing trees and provide a landscaped buffer habitat incorporating native species to separate the appeal site from the nature reserve. It is proposed to provide a sensitive lighting scheme to avoid adversely affecting bat foraging and this can be secured through a planning condition. No objections have been raised by the Council's Ecologist and I have been provided with no convincing evidence to conclude otherwise with regard to this matter.
35. I am satisfied that the proposed buildings would be sited sufficient distance from neighbouring dwellings to avoid any adverse effects such as loss of light or overshadowing. A noise assessment² has been supplied which considers the effect of noise generated by the development on the living conditions of the occupiers of neighbouring properties. Following detailed modelling of all aspects of the development, it concludes that the majority of the noise experienced at neighbouring properties arising from the site will be from vehicle movements. It concludes that the noise is unlikely to be distinguishable from the existing noise arising from the adjacent road network. Having regard to the proximity of these existing noise sources to the neighbouring properties and noting the conclusions of the assessment I am satisfied that the proposal would not create

² Acoustic Report by ADC Acoustics ref: ARR/C/2565.56

noise levels that would significantly exceed existing levels to the extent that it would adversely affect the living condition of the occupiers of neighbouring properties. I note no objection has been received from the Council's Environmental Health section in this regard and this reinforces my assessment.

Conditions

36. I have considered the conditions suggested by the Council in the light of the tests and advice within the Framework and the PPG. I have undertaken some minor editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity. I have also limited the number of pre-commencement clauses to those cases where this is essential for the condition to achieve its purpose.
37. Conditions are necessary in respect of commencement time and relating the development to the submitted plans. Details of external materials are required to ensure the proposal integrates acceptably with the character and appearance of the area. A condition relating to the implementation of the landscaping scheme shown on the approved plans is required for the same reason, whilst tree protection is necessary in the interests of maintaining the health of the trees during the development.
38. Notwithstanding the provisions of the Building Regulations 2010 as amended in respect of wastewater, and the details already supplied, in line with the drainage hierarchy in the PPG, it is nonetheless appropriate to require further details of the proposed sustainable drainage via condition 5. Having regard to the proposed use of the appeal site and its proximity to residential properties and a nature reserve it is reasonable to require details of measures to prevent surface water pollution during development and its operation through conditions 7 and 8.
39. In the interests of the protection of public health and safety, I have imposed a condition requiring submission of details of measures to deal with contaminated land as recommended by the Council's Environmental Control Officer. With reference to the approach in the PPG that is a proportionate and necessary response to the nature of the site.
40. A condition is necessary to ensure that the parking and turning areas for the development are provided and retained in the interests of highway safety. Similarly, details of highway works, including phasing, future maintenance and the protection of the visibility splay are necessary in the interests of highway safety. Details of measures to protect the M65 and Whitewalls Drive embankment, as well as the provision of a Construction Management Plan are necessary to ensure highway safety is protected during construction. In line with paragraphs 112 of the Framework, it is further necessary to impose a condition requiring that the proposed electric vehicle charging points and cycle stores are installed.
41. Conditions relating to provision of an acoustic fence and requiring the development to be carried out in accordance with the Construction Management Plan are required in the interests of the living conditions of local residents.
42. I am statutorily required to have regard to conserving biodiversity, and paragraph 174. d) of the Framework and a condition requiring the

implementation of the lighting scheme is necessary, specifically with regard to bats.

Conclusion

43. For the reasons given above, having considered the development plan along with all other relevant material considerations, I conclude that the appeal should be allowed.

Paul Martinson

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: 001 Z, 002A, 003B, 004B, 006A, 007A, 008A, 009A, 010A, 011A, 013B, 014B, 015A, Planting Plan 01D, D41971/LC/A.
- 3) Prior to the commencement of development details of the proposed materials to be used externally on the buildings, means of enclosure and all external surfacing shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter conform to the details so approved and thereafter be maintained as such.
- 4) No development shall take place until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. It shall provide for:
 - i) The parking of vehicles of site operatives and visitors
 - ii) The loading and unloading of plant and materials
 - iii) The storage of plant and materials used in constructing the development
 - iv) The erection and maintenance of security hoarding
 - v) Wheel washing facilities
 - vi) Measures to control the emission of dust and dirt during construction
 - vii) A scheme for recycling/disposing of waste resulting from demolition and construction works
 - viii) Details of working hours
 - ix) Routing of delivery vehicles to/from site.
- 5) The development permitted by this planning permission shall be carried out in accordance with the principles set out within the flood risk assessment and drainage strategy report (January 2021, Project No: P14612, Goodson Associates). No development shall commence until a detailed, final surface water sustainable drainage strategy for the site has been submitted to, and approved in writing by, the local planning authority. Those details shall include, as a minimum:
 - a) Sustainable drainage calculations for peak flow control and volume control (1 in 1, 1 in 30 and 1 in 100 + 40% climate change), with allowance for urban creep.
 - b) Final sustainable drainage plans appropriately labelled to include, as a minimum:
 - i. Plan identifying areas contributing to the drainage network, including surface water flows from outside the curtilage as necessary;
 - ii. Sustainable drainage system layout showing all pipe and structure references, dimensions, design levels;

- iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;
- iv. Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;
- v. Finished Floor Levels (FFL) in AOD with adjacent ground levels for all sides of each plot to confirm minimum 150mm+ difference for FFL;
- vi. Details of proposals to collect and mitigate surface water runoff from the development boundary;
- vii. Measures taken to manage the quality of the surface water runoff to prevent pollution, protects groundwater and surface waters, and delivers suitably clean water to sustainable drainage components;
- c) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates and groundwater levels in accordance with industry guidance.

The sustainable drainage strategy shall be implemented in accordance with the approved details and completed prior to first occupation of any building and thereafter retained as such.

- 6) The development shall not be commenced until a method statement which sets out in detail the method, standards and timing for the investigation and subsequent remediation of any contamination which may be present on site has been submitted to and approved in writing by the Local Planning Authority. The method statement shall detail how:
- a) an investigation and assessment to identify the types, nature and extent of land contamination affecting the application site together with the risks to receptors and potential for migration within and beyond the site will be carried out by an appropriately qualified geotechnical professional (in accordance with a methodology for investigations and assessments which shall comply with BS 10175:2001) will be carried out and the method of reporting this to the Local Planning Authority; and
 - b) a comprehensive remediation scheme which shall include an implementation timetable, details of future monitoring and a verification methodology (which shall include a sampling and analysis programme to confirm the adequacy of land decontamination) will be submitted to and approved in writing by the Local Planning Authority.

All agreed remediation measures shall thereafter be carried out in accordance with the approved implementation timetable under the supervision of a geotechnical professional and shall be completed in full accordance with the agreed measures and timings, unless otherwise agreed in writing by the Local Planning Authority.

In addition, prior to commencing construction of any building, the developer shall first submit to and obtain written approval from the Local Planning Authority a report to confirm that all the agreed remediation measures have been carried out fully in accordance with the agreed details, providing results of the verification programme of post-remediation sampling and monitoring and including future monitoring proposals for the site.

- 7) Surface water draining from areas of hard standing shall be passed through an oil separator or series of oil separators, prior to being discharged into any watercourse, soakaway or surface water sewer. The separator(s) shall be designed and constructed to have a capacity compatible with the area being drained, shall be installed prior to the occupation of the development and shall thereafter be retained and maintained throughout the lifetime of the development. Clean roof water, vehicle wash downs and detergents shall not pass through the separators(s) and should be drained instead to foul sewer or sealed system.
- 8) No development shall commence unless and until details of how surface water and pollution prevention will be managed during each construction phase have been submitted to and approved in writing by the local planning authority. Those details shall include for each phase, as a minimum:
 - a) Measures taken to ensure surface water flows are retained on-site during construction.
 - b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses.The development shall be constructed in accordance with the approved details.
- 9) No development shall take place until a scheme for the construction of the site access including a signalised junction and off-site highway works including the validation of movalink technology on the North Valley Road has been submitted to and approved in writing by the Local Planning Authority. The works shall be completed prior to the first use of the filling station or the drive through coffee unit, whichever is sooner, and thereafter maintained as such.
- 10) No development shall commence until a technical detailed design with drainage details, maintenance, easements for access and any other relevant details has been submitted to and approved by the Local Planning Authority to set out a no dig zone in the vicinity of the M65 and Whitewalls Drive embankment. No part of the development hereby approved shall be occupied until the development has been constructed in accordance with the approved scheme details.
- 11) Prior to the commencement of development full engineering, drainage, street lighting and constructional details of the internal estate roads, incorporating a phasing plan for their provision and completion, shall be submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, including phasing, and thereafter maintained as such.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 there shall not at any time in connection with the development hereby permitted be erected or planted or allowed to remain upon the land hereinafter defined any building, wall, fence, hedge, tree, shrub or other device over 1m above road level. The visibility splays to be the subject of this condition shall be that land in front of a line drawn from a point 2.4 m measured along the

centre line of the proposed roads from the continuation of the nearer edge of the carriageway of estate roads to points measured 43m in both directions along the nearer edge of the carriageway, from the centre line of the access, in accordance with a scheme to be agreed by the Local Planning Authority prior to its provision.

- 13) Unless approved in writing by the Local Planning Authority no ground clearance, demolition, changes of level or development or development-related work shall commence until protective fencing, in full accordance with BS 5837 : 2012 has been erected around each tree/tree group or hedge to be preserved on the site or on immediately adjoining land as identified in the DEP Arboricultural Report (January 2021), and no work shall be carried out on the site until the written approval of the Local Planning Authority has been issued confirming that the protective fencing is erected in accordance with this condition. Within the areas so fenced, the existing ground level shall be neither raised nor lowered. Roots with a diameter of more than 25 millimetres shall be left unsevered. There shall be no construction work, development or development-related activity of any description, including the deposit of spoil or the storage of materials within the fenced areas. The protective fencing shall thereafter be maintained during the period of construction.

All works involving excavation of soil, including foundations and the laying of services, within the recommended distance calculated under the BS 5837 (2012) of the trees to be retained on the site, shall be dug by hand and in accordance with a scheme of works which has been submitted to and approved by the Local Planning Authority, prior to the commencement of works.

- 14) Within 3 months of commencement, details of the proposed arrangements for future management and maintenance of the estate road within the development shall be submitted to and approved by the local planning authority. The maintenance shall thereafter be undertaken in accordance with the approved details.
- 15) The lighting of the site shall at all times conform to the details shown on lighting plan D41971/LC/A which shall be installed prior to the completion of the development and thereafter maintained as such.
- 16) Prior to the first use of the buildings on site details of an acoustic fence to be erected on the joint boundary of the houses on Greenfield Road shall be submitted to and approved in writing by the Local Planning Authority. The fence shall be erected before the first use of the industrial units and shall thereafter be retained.
- 17) No building hereby permitted shall be used until the car parking associated with that building has been provided. The car parking shall be retained for that use thereafter.
- 18) Prior to first use of the filling station or the drive through coffee unit, whichever is sooner, the secure cycle stores and electric vehicle charging points shall be installed and maintained for that purpose.
- 19) Within the first planting season after the substantial completion of the site or within 2 years from the commencement of development, whichever shall occur first, the planting and landscaping shown on

approved drawing Planting Plan 01D shall have been undertaken and completed in its entirety.

Any tree or other planting that is lost, felled, removed, uprooted, dead, dying or diseased, or is substantially damaged within a period of five years thereafter shall be replaced with a specimen of similar species and size, during the first available planting season following the date of loss or damage.

- 20) The Framework Travel Plan shall be adhered to in accordance with the timetable contained within.



Costs Decision

Site visit made on 23 June 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2022

Costs application in relation to Appeal Ref: APP/E2340/W/21/3289117
Land at Whitewalls Drive, Colne

- 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 c/o Applicant Monte Blackburn Limited for a full award of costs against Pendle Borough Council.
The appeal was against the refusal of Re-development of the site comprising the erection of roadside services including a Petrol Filling Station with ancillary convenience floor space and drive-thru coffee unit (Sui Generis) and Erection of two industrial units (Use Class B2/B8), with associated infrastructure, access, car parking and landscaping.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.
3. Paragraph 49 of the PPG makes clear that local planning authorities are at risk of an award of costs if they prevent or delay development that should clearly be permitted, fail to produce evidence to support each reason for refusal on appeal, or make vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicants' case for a full award of costs references the above elements of the PPG. Their principal concern is that the Council issued an unsubstantiated refusal contrary to the recommendation of its planning officers and independent retail consultants.
5. I acknowledge that the Council's Planning Committee determined that planning permission should be refused, contrary to the officers' recommendation. While the Planning Committee is not duty bound to follow the advice of its officers or consultees, if a different decision is reached the Council has to clearly demonstrate why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
6. With regard to the first reason, the Council clearly sets out its concerns in the reasons for refusal: *'The nature and design of the proposed development, which is industrial in nature, is out of scale and character with the surrounding countryside and setting and considerably detracts from the open aspect of the*

area and thus is poor design... These reasons for refusal are supported by the Council's appeal statement. Whilst I took a different view, the Council's Members were entitled to take the opposite view, contrary to its officers. On the basis of what is before me, I am satisfied that this judgement was exercised reasonably.

7. With regard to the second reason for refusal, the decision notice makes clear that the Council considers that the retail impact of the units, although modest, would result in an unacceptable impact on Colne town centre. This is supported by the approach in the Council's appeal statement which sets out the Council's view that there is limited passing trade in this location. It provides evidence for this conclusion in terms of commuter numbers as well as information with regard to the level of spend in Colne. Whilst I was not convinced by the Council's evidence, the Council's Members were nonetheless entitled to take a different view to its officers on this basis and, for the above reasons I am satisfied that the refusal was not unsubstantiated.
8. In coming to the above conclusion, I have had regard to the Framework and the requirement for a sequential test. Whilst the appeal site falls below the floor space threshold of 2,500 square metres contained within the Framework, this does not, to my mind, mean that a development could not theoretically have a significant adverse effect on town centre vitality and viability.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul Martinson

INSPECTOR