



Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 03/06/09
23/06/09
24/06/09

Ymweliad â safle a wnaed ar 24/06/09

Appeal Decision

Inquiry held on 03/06/09
23/06/09
24/06/09

Site visit made on 24/06/09

gan/ Bill Barnes LLM LMRTPI

**Arolygydd a benodir gan Weinidogion
Cymru**

**an Inspector appointed by the Welsh
Ministers**

Dyddiad/Date 04/08/09

Appeal Ref: APP/K6920/A/08/2093259/WF

Site address: Blackwood Gate Retail Park, Blackwood, Caerphilly NP12 1AT

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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr G Tromans, on behalf of Develica (South Wales Blackwood) LLP ["the Appellants"] against the decision of Caerphilly County Borough Council ["the Council"].
- The application [Ref. 08/0587/NCC], dated 15 May 2008, was refused by notice dated 13 November 2008.
- The proposed development comprises a variation of condition no.6 of outline planning permission [reference P/00/1022], dated 9 September 2004 ["the 2004 permission"], as amended by condition no.3 of a planning permission [reference P/05/1697], dated 12 July 2007 ["the 2007 permission"], to allow up to 4,459 square metres of the floor space to be utilised as a grocery store.
- The 2004 permission was for a retail and leisure development, which now contains the Blackwood Gate Retail Park.
- The 2007 permission varied condition 7 of the 2004 permission to reduce the required minimum size of individual retail units from 650 square metres to 465 square metres. It also imposed condition no.3 limiting the total floor space to 7,853 square metres and requiring that this should only be used for the sale of goods described as: "DIY, hardware, furniture, carpets and flooring coverings, soft furnishings/textiles, electric and gas products, motor vehicle accessories and cycles, boats and caravans, office equipment and garden and pet products."
- The reason given for condition 3 of the 2007 permission is: "In the interests of preserving the vitality and viability of Blackwood Town Centre".

Decision

1. I dismiss the appeal.

Procedural Matters

2. I opened the inquiry on 3 June 2009, but at the end of the proceedings on that day I adjourned until 23 June 2009 to allow the Appellants the opportunity to consider and respond to rebuttal evidence submitted on behalf the Council. The inquiry continued on 23 and 24 June 2009, when I adjourned again to allow the execution and submission of a unilateral planning obligation ["UPO"] under section 106 of the Act. This was subsequently carried out and on 1 July 2009 I formally closed the inquiry, by letter, with the agreement of the parties.

The Proposed Development

3. The description of the proposed development, as described in the application, lacks clarity and it is agreed that this comprises a variation of condition number 6 of the 2004 permission, as amended by condition 3 of the 2007 permission, to read as follows:

"The development hereby approved shall be limited to a total floorspace of 7,853 square metres to be used for the sale of any of the following goods: DIY, hardware, furniture, carpets and floor coverings, soft furnishings/textiles, electric and gas products, motor vehicle accessories and cycles, boats and caravans, office equipment, and garden and pet products. In addition up to 4,459 square metres of the floorspace may be utilised as a grocery superstore, excluding the units currently occupied by the existing Focus DIY and the existing public house unit occupied by Marstons."

Main issue

4. The decision included reasons for refusal that related to parking facilities and the highway network. However, having regard to UPO that includes a travel plan, the Council no longer object to the proposal on parking or highway grounds.
5. Although the site comprises a fully developed retail warehouse site, the Blackwood Gate Retail Park, only a Focus DIY store currently trades from there while the six adjoining retail units are vacant. A new public house and restaurant is also trading at the site. The retail statement supporting the appeal application indicated that the intention of the proposal was to enable a major food operator to occupy the vacant units.
6. I find that the main issue is whether the proposed variation of the condition to allow for the constructed retail units on the site to accommodate a grocery superstore of up to the stated floorspace is acceptable having regard to the development plan, national policies and the impact upon the vitality and viability of Blackwood and Bargoed town centres.

Reasons

7. The statutory development plan, comprising the 1996 Gwent Structure Plan and the 1996 Islwyn Local Plan, is out of date and the parties agree that the policies considered relevant to this appeal are in the Council's 2003 approved Caerphilly Unitary Development Plan ["CUDP"], which has gone through a statutory process that included three stages of public consultation, a public inquiry and modifications after the Inspector's recommendations. CUDP's retail strategy seeks to anchor each of its main town centres with a major foodstore. There is an Asda

store within the northern limits of the currently defined Blackwood town centre. The site, which lies outside the town centre's southern boundary, is one of two sites allocated for retail warehousing in CUDP's Policy R4. It would be in conflict with this allocation to allow a grocery superstore to be accommodated on the site.

8. The relevant national guidance is contained in sections 10.1 to 10.3 of Planning Policy Wales, as amended by the Ministerial Interim Planning Policy Statement 02/2005: Planning for Retailing and Town Centres. It states [para. 10.1.1] that one of the Assembly Government's stated objectives for retailing and town centres is to promote established town centres as the most appropriate locations for retailing, leisure and for other functions complementary to it. It refers to considering whether there is a need for additional retail provision [para. 10.2.10], and if there is, to adopting a sequential approach with preference for town centre locations [para.10.2.11]. It sets out the factors that should be taken into account when determining an application for such retail uses, including the variation of conditions [para. 10.3.1]. These factors include the impact on existing centres.
9. CUDP's Policy R5 is influenced by the national guidance and indicates that proposed new large retail stores will be considered in accordance with the sequential approach and adds three circumstances in which they will not be permitted. These relate to the vitality and viability of nearby defined centres, or the undermining of the Council's retail strategy or a town centre action plan. The Blackwood Town Centre Action Plan ["BLAP"], which was adopted as supplementary planning guidance ["SPG"] in April 2001, identifies the site for retail warehousing/leisure development. The Caerphilly County Borough Local Development Plan ["CLDP"] was put on deposit in October 2008, with an anticipated examination in public in 2010 and the end of that year as the target date for adoption. It reiterates the site's retail warehouse park allocation. The Appellants have submitted objections to CLDP, including the status of Bargoed.
10. The Appellants and the Council differ about some of the site's characteristics, but they agree that it has an edge of centre location. It lies outside the Blackwood town centre boundary, as indicated in CUDP, BLAP and CLDP. Although the distance from the site to significant uses within the town centre compare favourably with the existing Asda town centre store, I find that the site's physical and visual separation, accentuated by the topography, severely constrain its ability to be integrated into the town centre. I do not consider that it is capable of achieving a successful integration comparable to that achieved by the Asda store where there were also differences in land levels.
11. The Appellants expert evidence includes a comprehensive and detailed assessment of the proposal's likely retail impact. This concludes that the proposal would not have an unacceptable impact upon Blackwood or Bargoed town centres as the Council's evidence suggests. I consider that it is difficult to be precise about the likely impact given the significant difference that would result should some of the assumptions upon which the Appellants rely, including retained expenditure in the catchment area, prove to be incorrect. There is disagreement about the likely trade generated by the former Co-op Store at Pontllanfraith that is currently being refurbished as a Sainsburys store. Moreover, notwithstanding the time that the former Somerfield store within Blackwood town centre has remained vacant and the difficulties created by its size and the difference in levels, I do feel that in this location, next to a small modern shopping complex, it

is still capable of attracting a smaller foodstore operator. Having regard to all the evidence before me and notwithstanding the wide variety of goods that currently can be lawfully sold from the site, I find that there is a real risk that the proposal would harm Blackwood town centre's trade.

12. The town of Bargoed, to the north of Blackwood, was one of two town centres where it was unable to find a suitable site having regard to the severe constraints created by the topography and the historical pattern of development in this part of the Valleys. Since then a major regeneration study has resulted in massive public sector investment with the construction at Bargoed of a retail plateau, with a 30m high earth bank retaining wall, that is capable of accommodating such a foodstore in a multi-tiered development fully integrated into the main shopping street. The construction of the Bargoed by-pass, which commenced in 2008, provides significant improvements to the area's highway system. The Appellants maintain that the Bargoed redevelopment is extremely speculative with no guarantee that it will proceed, even with Morrisons, the Council's currently preferred superstore operator. On the basis of all the evidence before me, including the present design for the project and my site visit, I feel that there is a realistic prospect of the redevelopment proceeding. On 28 April 2009 the Council adopted, as SPG, the Bargoed Town Centre Action Plan, which includes the retail plateau proposals.
13. The Appellants submitted a letter from the agents retained in Wales by Morrisons, confirming an interest in opening negotiations should the appeal be successful. Although the agents also indicated that Morrisons interest in locations nearby such as Bargoed would not prejudice their continued interest in Blackwood, I find that allowing a foodstore at the site would put the Bargoed redevelopment proposals at significant risk of failure, with very serious consequences for CUDP's retail strategy.
14. The Appellants place great reliance on the fact that the units at the Blackwood Gate Retail Park, apart from the Focus store, have remained empty since their completion in November 2006. The Appellants claim that, because of the site's difficult contours, they were unable to build one store in isolation and they therefore constructed the whole scheme without additional pre-lets in place. The Council question the marketing of the units bearing in mind the rent levels and the incentives that have been offered. Mr Hales, a very experienced partner in one of the joint selling agents for the site, maintains that there has been almost no interest, even though every conceivable means of attracting tenants has been made both nationally and locally since 2004. The agents conclude that there is no hope of letting the units for retail or for leisure purposes. However, even if it is assumed that the Appellants marketing exercise has been exhaustive, this is not sufficient in itself to allow the proposal. The current unprecedented economic situation has had a severe impact upon the retail property market. The view of Mr Hales is that it has never been worse. He contrasts this with the continuing expansion of foodstores and the interest in the site from major superstores. The parties also refer to the effect of internet sales on the retail market. The Appellants maintain that there has been such a change in shopping habits that bulky goods and DIY will not survive as a separate category in future. This may be a question eventually to be considered elsewhere, but the most up to date planning policy confirms the site's allocation for retail warehousing. In any event these factors are not an exceptional justification for allowing a grocery superstore

on the site, in conflict with the long term national and local policy objectives for retailing and town centres, resulting in the harmful consequences to which I have referred.

15. I have also taken into account all the other matters raised, including the support for the appeal from Blackwood Town Council and some members of the public, but none outweigh the above reasons that have led to my conclusion that the appeal should be dismissed.

T W B Barnes

Inspector

**PROOFS OF EVIDENCE, REBUTTAL EVIDENCE AND REBUTTAL RESPONSE
Including DOCUMENTS, PLANS and PHOTOGRAPHS referred to**

APPELLANTS

SJC E Shawn James Cullen BSc DipTP MRTPI
SW E Stephen Webster FRICS
PEH E Peter Edward Hales FRICS
CMR E Christine Margaret Reeves BSc DipTP MRTPI
CMR RR Christine Margaret Reeves BSc DipTP MRTPI

LOCAL PLANNING AUTHORITY

RDT E Roger David Tanner BSc MA MRTPI
RDT RE Roger David Tanner BSc MA MRTPI

OTHER DOCUMENTS

- 1 Copy notice of inquiry.
- 2 Council's appeal questionnaire documents.
- 3 Copy retail statement.
- 4 Statement of Common Ground.
- 5 Agreed wording of proposed variation.
- 6 Copy letter, dated 8 June 2009, from Rees Richards.
- 7 Copy letter, dated 18 June 2009, from Focus.
- 8 Copy letter, dated 22 June 2009, from RPS.
- 9 Copy Merthyr Leisure Park particulars: E J Hales.
- 10 Copy planning permission, dated 30 January 1987, for alterations and extension to Leo's Superstore.
- 11 Agreed conditions in the event of the appeal being allowed.
- 12 Section 106 Unilateral Planning Obligation, dated 30 June 2009.

PLANS

Plan A Indicative site layout plan.
Plan B 1:1250 location plan.