



## Planning Committee

9 July 2020

## Planning Appeals

<b>LOCATION</b>	Land On Wilford Lane West Bridgford Nottinghamshire		
<b>APPLICATION REFERENCE</b>	18/02920/HYBRID		
<b>APPEAL REFERENCE</b>	APP/P3040/W/19/3238073		
<b>PROPOSAL</b>	Hybrid application comprising full planning permission for construction of retail units (Class A1), café / restaurant (Class A3), and drinking establishment (Class A4), along with associated highway works including new access off Wilford Lane, servicing, landscaping and boundary treatments, and outline planning permission (with all matters reserved except for access) for residential uses (Class C3)		
<b>APPEAL DECISION</b>	Appeal Allowed	<b>DATE</b>	19th May 2020

### PLANNING OFFICERS OBSERVATIONS

This application was reported to the Planning Committee on the 18 July 2019 with an Officer recommendation to support the grant of conditional planning permission subject to the applicant entering into a S106 for the provision of appropriate infrastructure including highway and bus stop improvements, as well as education and health contributions. The Committee resolved to refuse planning permission on the three following grounds:

- 1. The proposal would result in the loss of a substantial protected Lime Tree which occupies a prominent position close to the frontage of the site, and makes a significant contribution to the amenities and character of the area. The proposal is therefore contrary to Policy GP2 (Design and Amenity Criteria) of the Rushcliffe Borough Non-Statutory Replacement Local Plan and Policy 10 (Design and Enhancing Local Identity) of the Rushcliffe Local Plan Part 1: Core Strategy.*
- 2. Whilst the application sought outline planning permission for the residential element of the scheme, with all matters except access reserved for subsequent approval, it has not been adequately demonstrated that the quantum of development referred to in the supporting documents and on the application form, and indicated on the illustrative plans can be accommodated on the site without detriment to the amenities of residential properties on Bede Ling. The proposal is therefore contrary to Policy GP2 (Design and Amenity Criteria) of the Rushcliffe Borough Non-Statutory Replacement Local Plan and Policy 10 (Design and Enhancing Local Identity) of the Rushcliffe Local Plan Part 1: Core Strategy.*
- 3. The Borough Council is not satisfied that the submission adequately demonstrates that the cumulative effect of traffic generated by the development in combination with*

*committed development in the area can be accommodated on the highway network without causing unacceptable impacts on traffic flows, thereby causing congestion and adverse impacts on highway safety, contrary to Policy GP2 (Design and Amenity Criteria) of the Rushcliffe Borough Non-Statutory Replacement Local Plan.*

A subsequent appeal has been allowed and planning permission has been granted subject to planning conditions and the section 106 agreement. In addition, a partial award of costs was granted against the Council for its failure to substantiate the second and third reasons for refusal. A summary of the Inspectors report is set out below.

### Reason 1, the Lime Tree

The Inspector commented that Councillors are entitled to not accept the professional advice of Officers, however if a different decision is reached the Council has to clearly demonstrate why the proposal is unacceptable. In relation to this matter, the landscape contribution of the tree to the surrounding area is a matter of judgement and is to a degree subjective. The Council have not disputed the findings or categorisation of the tree, however, the Committee placed greater weight on the visual contribution it makes to the area.

The Inspector states that *“Whilst it is a large specimen and makes some contribution to the visual character of the surroundings it is relatively solitary within the wider site, which is relatively poor in terms of visual amenity.”* The Inspector also acknowledged the arboricultural report refers to the cavity in the tree and the resulting potential loss of the tree in the future. She also commented that the tree is not fundamental to the visual character of the surrounding area and the loss of the lime tree would not render the development unacceptable. The Inspector noted that officers had explored the potential to redesign the layout of the scheme, but that the end use of the site sufficiently demonstrates the reasons for the layout, and that loss of the tree is not judged to be so significant so as to make the scheme unacceptable. The proposed development is considered to bring a number of benefits, including: the sites access to services and facilities, the use of previously developed land, the provision of affordable homes and retirement apartments, economic benefits, a sustainable pattern of shopping, local investment, job creation and financial contributions secured by legal agreements. Those benefits were balanced against the loss of the Lime Tree, with The Inspector concluding that the benefits outweigh any harm to the character and appearance of the area as a result of the loss of the tree.

### Reason 2: The lack of Information

The Inspector noted that the submission of layouts, indicative or otherwise, are commonly utilised to demonstrate to the decision maker that the level of proposed development can likely be accommodated within the site with final designs requiring submission at reserved matters stage. The decision states that it is clear that the Council have treated the plans as indicative and that the committee report refers to the indicative nature of the plans.

The Inspector commented that the appeal site is separated from Bede Ling by a small watercourse and existing trees and landscaping, and although indicative only at this stage the submitted details suggest that the residential development would take the form of apartment blocks. In addition, the retirement living apartments are shown on the indicative

plans as potentially being located to the west of Bede Ling, towards the front part of the appeal site.

The Council's concerns specifically related to the impact of blocks C, D and E on the living conditions of the residents of Bede Ling. Based on the indicative plans, these blocks could potentially be 4 storeys or more in height and have substantial footprints. However, The Inspector commented that, having regard to the submitted information identifying the separation distances between the proposed blocks and the properties on Bede Ling, as well as the level of intervening mature landscaping, she considered that it has been adequately demonstrated that the proposed residential development could be located a sufficient distance from the existing dwellings to avoid an unacceptable overbearing impact on the occupiers of Bede Ling. It was noted that, based on the indicative scale and size of the proposed residential blocks, it is likely that in the suggested form they would be visible from a number of surrounding areas and whilst the existing properties along Bede Ling are reasonably modest, the surrounding area is mixed in scale and character. As a result of the varied buildings in the locality, and the existing screening resulting in a distinct visual separation between the properties on Bede Ling and the appeal site, the Inspector concluded that the introduction of larger and taller residential buildings in this location would not be visually harmful to the surroundings. The Inspector was therefore satisfied that a form of residential development set within the areas indicated on the indicative plans could be accommodated within the site without resulting in undue harm to the living conditions of nearby occupiers or in terms of visual prominence.

In this case, the matters before the Council related to access alone. All other matters were reserved for determination at a later date, a point officers sought to emphasise to the Committee. Whilst the Committee is not duty bound to follow the advice of its professional officers, in this instance the Committee report made it clear that access only was committed at this stage. It is not unusual for a scheme to identify how the number of units could be accommodated, however the matters relating to the final layout, scale and appearance would be determined through the submission of a further application relating directly to those reserved matters. Consequently, the Inspector found that concerns over the scale, appearance and layout, which were largely made on the basis of plans only to be used for illustrative purposes, lead to the conclusion that the Council had not (*and could not*) substantiated its reason for refusal on this matter with any clear evidence.

### Reason 3: Cumulative Highway Impacts

The Appellant provided a substantial amount of information in terms of highway impacts which include assessments of the existing traffic, potential traffic growth, impacts of construction traffic and the likely traffic effects arising as a result of the proposed development.

The Inspector carefully considered all of the information submitted and found that the analysis and predictions to be based on reasonable data and assumptions and comply with the relevant standards and guidance in respect of this matter. She also had regard to the comments of the County Council Highways Team and Highways England. The conclusions of the Transport Assessments demonstrate that the impacts of the proposed development on the highway network would be acceptable and would not give rise to severe impacts.

The proximity of the appeal site to the tram stop and the relationship between the proposed access for the residential properties and the existing access serving the Roko Health Club were also noted. However, the Council have put forward limited evidence (*in light of the lack of objections from the County Council as Highway Authority and Highways England*) to support their views that the cumulative impacts of these nearby facilities and the proximity to the junction would be significantly harmful to the safety of the users of the highway and capacity of the surrounding highway network.

The decision notice confirms that the Council engaged with the Appellant in a proactive manner to discuss and address the initial highway comments. The Council Officers provided detailed information to the Planning Committee, however, whilst it is not uncommon for Councillors to conclude differently in some cases, in this instance the appellant had carried out and provided a substantial amount of work and information to support their proposal and to ensure the impacts to the highway network are acceptable. Based on the information before them, limited technical evidence has been provided to support the view of the Council in their reason for refusal on these grounds. Consequently, in respect of this matter, the Inspector found that the Council had failed to substantiate and provide evidence to support this reason for refusal.

### Residents other concerns

In relation to other issues raised by residents, specifically the sale of fast food close to the school, the Inspector states this is not something that could be reasonably controlled by condition, nor have they been presented with evidence that would demonstrate that this would be against the Council's policies or that it would be significantly harmful enough to render the proposed development unacceptable. In relation to noise and air pollution, conditions relating to these matters can be imposed requiring details and limits on noise and odours from the commercial elements of the development. The points relating to the loss of countryside were noted however the site is fenced off and vacant and is not categorised as countryside or formal open space. The development would include areas of landscaping and would also make the necessary contributions to open space.

The Inspector had been provided with little evidence that would indicate that the proposed development would be detrimental to other businesses in the wider area or that there is a lack of need for the proposed commercial units. Whilst they acknowledge the suggestion that the site could be used for a nature area or for the school to use, they must consider the scheme that is put before them rather than suggested alternatives.

Planning permission has therefore be granted subject to planning conditions, and a partial award of costs granted against the Council in respect of reasons 2 and 3.