

Wolverhampton City Council

OPEN INFORMATION ITEM

Committee / Panel	<u>PLANNING COMMITTEE</u>	Date: 8 th January 2012
Originating Service Group(s)	EDUCATION AND ENTERPRISE	
Contact Officer(s)/	STEPHEN ALEXANDER (Head of Planning)	
Telephone Number(s)	(01902) 555610	
Title/Subject Matter	PLANNING APPEALS	

1.0 Purpose of Report

- 1.1 To provide the Committee with an analysis of planning appeals in respect of decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.

2.0 Planning Appeals Analysis

- 2.1 The Appendix to this report sets out the details of new planning appeals, ongoing appeals and those which have been determined by the Planning Inspectorate in respect of the decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.
- 2.2 In relation to the most recent appeal decisions of the Planning Inspectorate i.e. those received since last meeting of the Committee, a copy of the Planning Inspector's decision letter, which fully explains the reasoning behind the decision, is attached to this report. If necessary, Officers will comment further on particular appeals and appeal decisions at the meeting of the Committee.

3.0 Financial Implications

- 3.1 Generally, in respect of planning appeals, this report has no specific financial implications for the Council. However, in certain instances, some appeals may involve the Council in special expenditure; this could relate to expenditure involving the appointment of consultants or Counsel to represent or appear on behalf of the Council at Public Inquiries or, exceptionally, if costs are awarded against the Council arising from an allowed planning/enforcement appeal. Such costs will be drawn to the attention of the Committee at the appropriate time.

**4.0 Equal Opportunities/
Environmental Implications**

- 4.1 None.

NEW APPEALS

Appeal Site / Ward / Appellant	Application No / Proposal
Grass Verge Corner Of Wergs Road And Wrottesley Road, Wolverhampton Tettenhall Regis Telefonica UK Ltd	12/00384/FUL Telecommunications - Vodafone/O2 - Installation of a 15 metre high column designed to have the appearance of a telegraph pole, associated antennas, equipment cabinets and ancillary development.

ONGOING APPEALS

	<u>Appeal Site / Ward</u>	<u>Appellant</u>
1.	53 Mount Road Tettenhall Wood Wolverhampton Tettenhall Wightwick	Mr P Stafford
2.	28 & 29 Stubbs Road Wolverhampton Graiseley	Mr _ Mrs DJ _ M Bradley
3.	Lidl Finchfield Hill Wolverhampton Tettenhall Wightwick	Miss Donna Commock
4.	Land At Wergs Garage 81 Wergs Road Wolverhampton Tettenhall Regis	Telefonica UK Ltd
5.	84 Woodthorne Road South Wolverhampton Tettenhall Regis	Mr B Singh
6.	Grass Verge Corner Of Wergs Road And Wrottesley Road Wolverhampton Tettenhall Regis	Telefonica UK Ltd
7.	7 Uplands Avenue Merry Hill Wolverhampton Merry Hill	Mrs L Bower
8.	18B Milcote Drive Wolverhampton Bilston North	Mr And Mrs Washbrook

9. 52 Woodthorne Road
Wolverhampton

Jabber Mir

Tettenhall Regis

APPEALS DETERMINED SINCE LAST MEETING

Appeal Site / Ward / Appellant	Application No / Proposal	Decision and Date of Decision
Land At New Street, Portobello, Wolverhampton East Park Vodafone/O2	12/00407/TEL Telecommunication - Vodafone/O2 - Installation of a 15m jupiter 811E street works column, associated equipment and housing.	Appeal Allowed 04.12.2012
Lidl Food Store, 27 Blackhalve Lane, Wolverhampton Fallings Park Donna Commock	12/00182/VV Variation of condition 13 of planning permission 04/2196/FP/M to allow for the application of vinyl coverings to windows on the Blackhalve Lane frontage.	Appeal Dismissed 14.12.2012



Appeal Decision

Site visit made on 8 November 2012

by **N M McGurk BSc (Hons) MCD MBA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 December 2012

Appeal Ref: APP/D4635/A/12/2179377

New Street, Bilston, Wolverhampton, WV13 3TQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Telefonica UK Ltd against the decision of Wolverhampton City Council.
 - The application Ref 12/00407/TEL, dated 27 July 2012, was refused by notice dated 11 May 2012.
 - The development proposed is O2/Vodafone 15m high Jupiter 811E finished in Grey (BS 00 A 05). Top of O2/Vodafone antennas 14.85m AGL. C/L O2/Vodafone antennas 14.2m AGL. U/S O2/Vodafone antennas 13.55m AGL. Proposed O2/Vodafone meter pillar finished in Green (RAL 6009) cabinet volume under 2.5m³. Proposed O2/Vodafone cabinet finished in Green (RAL 6009) cabinet volume under 2.5m³.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended), in respect of development by a telecommunications code system operator for the siting and appearance of O2/Vodafone 15m high Jupiter 811E finished in Grey (BS 00 A 05). Top of O2/Vodafone antennas 14.85m AGL. C/L O2/Vodafone antennas 14.2m AGL. U/S O2/Vodafone antennas 13.55m AGL. Proposed O2/Vodafone meter pillar finished in Green (RAL 6009) cabinet volume under 2.5m³. Proposed O2/Vodafone cabinet finished in Green (RAL 6009) cabinet volume under 2.5m³ at land at New Street, Bilston, Wolverhampton, WV13 3TQ in accordance with the terms of the application Ref 12/00407/TEL, dated 27 July 2012, and the plans submitted with it.

Procedural Matter

2. On 27 March 2012 the government published the National Planning Policy Framework ("the Framework"), which replaced most extant national Planning Policy Statements and Guidance with immediate effect. The parties were given the opportunity to make any representations as to its impact in their respective cases and its provisions have informed my determination of this appeal.
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Main Issues

3. The main issues in this case are the effect of the development proposed on the character and appearance of the area; and its effect on the future development of the adjacent site on New Street.

Reasons

Character and Appearance

4. The appeal site is located on a tarmac footway on the east side of New Street, close to a bank of mature trees. The site is surrounded by disused, open land and the wider area is in mixed use, including industrial, housing, commercial and community buildings. A nearby large roundabout dominates the appearance of the area, which is punctuated by typical roadside infrastructure, including street lights and signs.
5. The proposal is for a 15m high Jupiter 811E Street works column, the purpose of which is to provide two operators with new 3G coverage through a single shared facility. The information before me demonstrates that the site has been selected as the best option following a sequential search of alternative locations and the need for the proposal has not been disputed by the Council. In this regard, I note that during the pre-application stage, the Council stated that the site was located 'away from residential properties and not sited within a sensitive location as advised within (the) Interim Telecoms Policy.'
6. Whilst taller than nearby streetlights, I consider that the proposed development would appear as a typical piece of roadside infrastructure, associated with the nearby roundabout. I find that its simple form and the proposed green and grey colours, would mean that the development would appear as modern street apparel rather than visual clutter. Furthermore, I find that the bank of trees adjacent to the site, would help mask the development when seen from the north and provide a significant backdrop, minimising its impact, when seen from other directions. I also consider that the relatively large scale of nearby buildings, including commercial and residential properties, would mean that the proposal would appear neither obtrusive, nor visually prominent and as such, its impact on the skyline would be minimal.
7. Consequently, I find that the proposed development would not harm the character and appearance of the area and that there is no conflict with UDP¹ policies D6, D7 and D9, and Core Strategy² policies CSP4 and ENV3, which together amongst other things, seek to protect local character. The proposal would also comply with UDP policy EP20 and the Council's Interim Telecommunications Policy, which together amongst other things, seek to minimise the visual impact of telecoms development.

Future Development

8. The Council's refusal notice states that the proposal would prejudice the development of the adjacent site on New Street. Whilst the Council provides no further evidence in support of this, I note the representation by a local Housing Association. However, I have found that the proposal would not harm the

¹ Wolverhampton City Council Unitary Development Plan 2001-2011 (June 2006).

² Black Country Core Strategy Adopted February 2011.

character and appearance of the area and there is nothing before me to

demonstrate that the proposed development would prevent, obstruct or blight the future development of the adjacent site on New Street. Consequently, in the absence of any substantive evidence to the contrary, I find that the proposed development would not prejudice the future development of the adjacent site on New Street. As such, the proposal is not contrary to UDP policy D6 and Core Strategy policies CSP4 and ENV3, which together amongst other things, promote successful place-making.

Other Matters

9. I am aware of the concerns of local residents regarding the possible effects of the proposal on public health. However, the new Framework makes it clear that the planning system is not the place for determining health safeguards if the proposal meets the ICNIRP guidelines for public exposure. Since the Certificate submitted by the appellant confirms that emissions from the installation would be in full compliance with requirements of the guidelines, it is not necessary for me to consider further the health aspects and concerns about it. I recognise that the concerns of those who live in the area are sincere and keenly felt. However, there is no specific or compelling evidence before me to indicate that a different approach should be adopted in this case. Although I have treated those concerns as a material consideration, I have found nothing to outweigh the thrust of Government advice in this respect.

Conclusion

10. I recognise the strength of local feeling in relation to the development proposed. I confirm, in this regard that, in coming to my conclusion, I have taken full account of all the representations that have been made. These have been balanced against the provisions of the development plan and the new Framework. I have found that there would be no harm to the character or appearance of the area and there is no substantive evidence before me to demonstrate that the proposed development would prejudice future development. I am also mindful of the importance the Government attaches to a high quality communications structure, which is essential for sustainable economic growth. Accordingly, for the reasons set out above, I conclude, on balance, that the appeal should succeed.

N M McGurk

INSPECTOR



Appeal Decision

Site visit made on 8 November 2012

by N M McGurk BSc (Hons) MCD MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 December 2012

Appeal Ref: APP/D4635/A/12/2176498

Lidl Foodstore, Blackhalve Lane, Fallings Park, Wolverhampton, WV11 1BQ

- 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 conditions subject to which a previous planning permission was granted.
 - The appeal is made by Lidl UK against the decision of Wolverhampton City Council.
 - The application Ref 12/00182/VV, dated 14 February 2012, was refused by notice dated 28 March 2012.
 - The application sought planning permission for erection of a new retail food store with associated services, customer parking and landscaping without complying with a condition attached to planning permission Ref 04/2196/FP/M, dated 9 March 2005.
 - The condition in dispute is No 13 which states that: There shall be no obstruction of views into the building through the window on the Blackhalve Lane frontage by, for example, the application to the windows of any colour or material or by the placing of any internal partition, or wall, or materials including blinds or curtains or screens or the display of goods/positioning of shelves within 2 metres of the windows on the Blackhalve Lane frontage whereby views into the store would be obstructed. Unless otherwise agreed in writing by the Local Planning Authority (for the avoidance of doubt the display of goods which did not exceed the height of the window cills would be permitted as views into the store will not be reduced).
 - The reasons given for the condition is: To maintain a lively street frontage and in the interests of visual amenity. Relevant UDP Policies are ENV2 and S13.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The postcode on the application form is different to that provided on both the appeal form and the decision notice. I confirm that I have used the postcode provided on the appeal form and decision notice, which most accurately reflects the site address.

Main Issues

3. The main issues in this case are the effect that the removal of condition 13 would have on the character and appearance of the area, and its effect on natural surveillance of this part of Backhalve Lane.
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Reasons

Character and appearance

4. The appeal property is a supermarket, located on Blackhalve Lane, a mixed use area comprising residential and commercial properties. The supermarket has an extensive elevation facing the road, which contains eight sets of large shop windows, separated by areas of brickwork. The length of this elevation runs along the back of the footway. These large windows are not obscured, allowing for views into the store from the street; and out onto the street, from inside the store. This provides for a strong sense of connectivity between the store and the surrounding area.
5. The windows enliven the elevation, by allowing views into the active store behind and minimising the areas of blank facades fronting onto the footway. In so doing, they also ensure that this long elevation has neither a domineering nor an oppressive impact on Blackhalve Lane. Taking all of this into account, I consider that the windows make a positive contribution to the character and appearance of the area.
6. It is proposed to place full window height vinyls in three of the eight windows facing Blackhalve Lane. These would be located towards the middle of the elevation and would have a 'bakery design.' In support of its case, the appellant states that the vinyls would be intended to hide bakery ovens to be installed in the first aisle of the store. The appellant goes on to state that the bakery ovens would be full window height, would block views into and out of the store, and would be less attractive than the proposed vinyls.
7. In this regard, I am mindful that condition 13 prevents the obstruction of views into the store. Furthermore, I consider it unlikely, given the significant length of frontage concerned, that the proposed bakery ovens would block views into and out of the store across this wide area and there is no substantive evidence before me to lead me to consider otherwise.
8. During my site visit, I noted that there was a bakery section, including ovens, installed in the first aisle of the store. I found that the ovens were largely unobtrusive and that much of the area was hidden from the outside by blank areas of wall. That part of the bakery section which was visible, through two of the windows, did not block views into, or from the store, but rather, the windows provided for unfettered views into an animated area of the store.
9. Whilst the proposed vinyls are intended to be colourful and attractive, they would prevent any views into, or from, the store, across this long street frontage, creating a visually solid façade, devoid of activity. As with a previous Inspector, who determined an appeal relating to the same condition at the same store¹, I find that this would have an oppressive, enclosing effect and would detract unacceptably from the character and appearance of this part of Blackhalve Lane. This would be contrary to Core Strategy² policies CSP4 and ENV3, and UDP³ policies D5, and D9, which among other things, seek to secure

¹ Reference: APP/D4635/A/11/2148156.

² Black Country Core Strategy Adopted February 2011.

³ Wolverhampton City Council Unitary Development Plan 2001-2011 (June 2006).

high quality development that makes a positive contribution to the locality, with active street frontages.

Natural surveillance

10. The existing large, clear glazed windows enable shoppers and staff to observe the street outside from within the store. This allows for natural surveillance along this part of Backhalve Lane at times when the shop is open. I am in no doubt that this helps reduce the fear of crime for passing pedestrians. I agree, in this regard, with the conclusion of the previous Inspector that replacing large, unobstructed windows with vinyls would materially reduce the sense of surveillance currently available, the likely consequence of which would be an increase in fear of crime. To allow the appeal would be contrary to UDP policy D10, which seeks to reduce the fear of crime. It would also conflict with the advice at paragraphs 58 and 69 of the National Planning Policy Framework, which seek to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.
11. Taking all of the above into account, I find that condition 13 is reasonable and necessary and therefore satisfies the tests in Circular 11/95: The Use of Planning Conditions.

Other Matters

12. In support of the appeal, the appellant provides examples of other commercial premises in the locality, where windows have been obscured by vinyls. During my site visit, I noted that a number of the examples were not directly comparable with the appeal scheme as they did not have windows facing out across a street, or were located at the back of parking or forecourt areas as opposed to lying directly at the back of the footway. Other examples were in commercial locations markedly different from the mixed use location relevant to this appeal. Moreover, some of the examples only served to confirm that such alterations can have a negative impact on the character of the area in which they were located. Taking this and the information before me into account, there is nothing that leads me to consider that the presence of vinyls in other locations provides a direct comparison, or makes the proposal before me acceptable. Whilst I also note that the proposal would impact on a lesser proportion of the building's frontage than the previous appeal scheme, this is not a factor which overcomes the harm I have identified.
13. I note the appellant's comment that there have not been any objections to the proposals from local residents, but this could be for any number of reasons and the absence of objection does not, therefore, necessarily equate to support.

Conclusion

14. For the reasons given above, the appeal does not succeed.

N M McGurk

INSPECTOR