

Committee / Panel	<u>PLANNING COMMITTEE</u>	Date: 9 th April 2013
Originating Service Group(s)	EDUCATION AND ENTERPRISE	
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Title/Subject Matter	CONSIDERATION OF WHETHER TO CONTEST A PLANNING APPEAL	

Recommendation

That planning appeal (APP/D4635/A/12/2189959) is not contested.

1 Introduction

- 1.1 The decision whether to provide a pedestrian crossing as part of the planning application for the proposed retail store is being considered by the Planning Inspectorate.
- 1.2 Since the application for the proposed store was considered by Planning Committee on the 6th of November, it has been established that in order to provide the pedestrian crossing, a tree of high amenity value would need to be removed.
- 1.3 The purpose of this report is for Planning Committee to consider, in light of the new information, whether they consider the proposed crossing is still necessary.
- 1.4 It is not within the jurisdiction of the Planning Committee to reconsider the acceptability of the proposed retail store. Only the necessity for the proposed pedestrian crossing can be considered.

2.0 Background

- 2.1 On the 16th of July 2012, an application for planning permission (12/00784/FUL) was received which proposed the erection of a retail store on part of the car park at the Claregate Public House, Codsall Road, Wolverhampton.
- 2.2 The application was considered by Planning Committee on the 6th of November 2012. Members resolved to grant planning permission subject to a number of conditions including one 'Grampian' condition which requires the provision of a pedestrian crossing across Codsall Road in connection with the proposed store.
- 2.3 The application was subsequently granted on the 28th of November 2012.
- 2.4 On the 31st of January 2013, an appeal was lodged with the Planning Inspectorate (APP/D4635/A/12/2189959). The appellants (Marstons PLC) are objecting to the imposition of the condition relating to the pedestrian crossing.
- 2.5 The original deadline for submitting the Council's Appeal Statement was the 14th of March. However, the Planning Inspectorate have agreed that the submission of the statements can be postponed until the 10th of April so that this issue can be considered by Planning Committee. The Planning Inspectorate have said that they will not agree to any more postponements.

3.0 Appraisal

3.1 The key issues are:

- Impact on existing street trees
- Necessity for the proposed crossing

Impact on existing street trees

- 3.2 As part of the appeal process it has been necessary to investigate the feasibility of creating a pedestrian (zebra) crossing within reasonable proximity of the application site.
- 3.3 On the eastern side of Codsall Road, the area of highway adjacent to the application site consists of a significant bus layby and the existing access for the public house (this will also form the access for the proposed store). The area of highway on the Western side of Codsall Road consists of a grass verge with a significant number of mature trees of high amenity value.
- 3.4 Investigations have shown that it is not possible to provide a pedestrian crossing within reasonable proximity of the application site, without having some impact on the bus layby, existing car park access or existing street trees.
- 3.5 It has been determined that, as a minimum, the provision of a pedestrian crossing adjacent to the application site would require the partial reconfiguration of the existing bus layby and, in order to provide sufficient visibility, the loss of one prominent, mature, Beech tree. In the time allowed, it has not been possible to undertake a detailed survey of the site. Therefore, it is not possible to provide a definitive assurance that more trees would not need to be removed in order to provide the crossing.
- 3.6 The Beech tree in question is a hardwood species, in excess of 14 metres high, and ultimately of forest-size. The tree is in good condition and is estimated to have a long remaining life span (in excess of 80 years). The attributes of this tree are such that if it were situated on private land it would certainly merit protection by a Tree Preservation Order.
- 3.7 Collectively, the street trees on the Western side of Codsall Road are an important feature of the local area. They create a very attractive, sylvan setting for the adjacent park and are considered to be of significant amenity value.
- 3.8 The relative even spacing of the existing trees means that the loss of one tree, particularly one of such prominence and significant stature

would leave a considerable 'gap' in the tree belt which would be extremely detrimental to the amenity of the area.

Benefits to highway safety

- 3.9 The proposed store is relatively modest in size. Whilst stores of a similar size and format predominantly provide top-up shopping for local residents arriving on foot, in this case, given the location of the application site on a relatively busy arterial route, this store is likely to generate comparatively greater car-based passing trade.
- 3.10 When calculating the amount of people who may visit the store by foot, 400 metres is considered to be a reasonable walking distance. Within this distance there is a distinct difference in the character east and west of Codsall Road. Whilst the west of Codsall Road predominantly consists of relatively large, detached properties, the east predominantly consists of relatively smaller, semi-detached houses. As a result, within the 400m walking distance, approximately twice as many people live on the eastern side of Codsall Road as on the west, and would have no need to use the proposed crossing in order to access the store.
- 3.11 Residents to the north of the store would be unlikely to use the pedestrian crossing in the location suggested, but would be more likely cross at the existing pedestrian refuge to the south of the roundabout junction with Pendeford Avenue, Blackburn Avenue and Codsall Road. In addition, a significant number of residents to the north of the site would use the existing Pendeford Avenue parade of shops for their local top-up shopping as opposed to the new store.
- 3.12 Similarly, it would appear unlikely that residents to the south of the application site would make heavy use of pedestrian crossing adjacent to the proposed store and would instead cross the road near the junction of Sandy Lane and Lothians Road. In addition, and as you move further south from the application site, the trade-draw from both Tettenhall and Newbridge Centres increases.
- 3.13 Whilst it is accepted that the proposed crossing would benefit customers living on the western side of Codsall Road and also those making a linked trip to the park, it is not considered that these individuals would represent a significant number of the total people using the proposed store.
- 3.14 For the reasons set out above, there is no evidence to suggest that the numbers of people crossing Codsall Road, in the vicinity of the application site, would significantly increase as a direct result of the proposed retail store.

4.0 Conclusion

- 4.1 The pedestrian crossing was required as Planning Committee felt that there was a road safety concern along the particular stretch of Codsall Road adjacent to the application site. Whilst the crossing would have limited benefit in providing a safer crossing for people using the park, there is no evidence to suggest that the proposed store would significantly increase the numbers of people crossing Codsall Road in the vicinity of the application site.
- 4.2 The proposed crossing would, as a minimum, result in the loss of a prominent, mature, Beech tree of significant amenity value which would, in turn, be detrimental to the existing tree 'belt' on Codsall Road which are an important feature of the area and which provide an attractive setting for the adjacent park.
- 4.3 On balance, for the reasons set out above, it is considered that any benefits to pedestrian safety which the crossing would provide would be outweighed by the harm to visual amenity and local character which it would cause.

5.0 Financial Implications

- 5.1 If the Council loses a case on appeal it may be held liable for the costs of the appellant if it has acted unreasonably.

6.0 Legal Implications

- 6.1 If Councillors decided to contest the appeal, it will be necessary to justify the reasons for the conditions in planning terms. The Council would have to put forward a case and the matter will be dealt with by the Planning Inspectorate. Unlike most court processes, for planning appeals, the party which does not win the case does not necessarily have to pay the costs of the other side. However, where it is found that the Council has acted unreasonably in contesting an appeal, costs may be awarded against the Council. LD/20032013/F

7.0 Equal Opportunities Implications

- 7.1 There are no equal opportunities implications as a result of this report.

8.0 Environmental Implications

- 8.1 Should the crossing be required, a minimum of one Beech tree would need to be removed.