

DUDLEY METROPOLITAN BOROUGH

PLANNING COMMITTEE – 22ND JUNE 2022

PRE - COMMITTEE NOTES

Page 1 Application No. P21/0912 - Former Coseley Baths, Pear Tree Lane, Coseley, West Midlands, WV14 8HA

1. Due to slight changes to the layout of car parking spaces, a revised Site Layout Plan has been submitted. As such Condition 2 (Approved Plans) has been amended.

Reference to plan PEARTL-WT-XX-00-DR-A-2400-P10 has been removed and replaced with PEARTL-WT-XX-00-DR-A-2400-P11

2. The recommendation is amended as follows;

It is recommended that the application be APPROVED subject to:

- a) The applicant entering into a Section 106 legal agreement to provide the affordable dwelling units within the development and the education contributions, with powers delegated to the Director of Regeneration and Enterprise to add, amend or remove relevant contributions sought;
- b) The following conditions with powers delegated to the Director of Regeneration and Enterprise to add remove or revise such conditions as necessary;
- c) The delegated authority to the Director of Regeneration and Enterprise to enter into a Section 278 Agreement as considered necessary.
- d) In the event that the S106 agreement has not been completed within six months of the resolution to grant approval, the application will be refused if appropriate.

One additional objection from a previous objector has been received with the following commentary to be considered with regards to the published officer report

FAO Stephanie Holland
Planning Department
Dudley Metropolitan Borough Council
The Council House,
Priory Rd,
Dudley
DY1 1HF

Our ref: .1713094.1.SS.
Your ref: WD/2016/1659/MAO

20 June 2022

By email only

Dear Madam

Proposal: External alterations to shopping precinct, including installation of entrance doors (to enable subdivision of retail units); partial demolition of Unit 1 to allow vehicular ingress/egress from High Street; partial conversion of Unit 1 to provide public toilet facilities; creation of surface car parking; associated public realm, landscaping, cycle parking and highways works.

Address: The Moor Centre, Brierley Hill, DY5 3AH

Our Client: Alan Warwick Limited

We have been instructed by our above client to write to you in response to the published Officer Report into the above application ("OR") which is due to be determined by the Planning Committee on Wednesday 22 June 2022.

The OR recommends approval of the application subject to conditions. We consider the OR, however, to be legally flawed in a number of respects as set out below, and as a result, the recommendation to approve to be untenable. Accordingly, we must put the Council on notice that should the Planning Committee proceed to grant planning permission in accordance with the impugned recommendation, our client will left with no option other than to seek the permission of the High Court to judicially review that decision.

The OR reveals the following errors of law¹:

1. A failure to have regard to relevant Development Plan Policies leading to an erroneous and unsupportable conclusion that the proposal accords with the Development Plan;
2. A failure to accurately report and address material objections to the proposal by the Historic Environment officer and Urban Design Officer both of whom expose conflicts with the Development Plan;
3. A misrepresentation of the Strategic Transport Team's position as one of "No objections" when in fact the Strategic Transport Team has not responded in relation to the revised access arrangements
4. A misrepresentation of the scheme's compliance with policy in relation to loss of open space

¹ This list is not exclusive and we reserve the right to refer to any other errors of law that may exist

1. A failure to have regard to relevant Development Plan Policies leading to an erroneous and unsupportable conclusion that the proposal accords with the Development Plan;

1.1 The mere fact that the OR lists a suite of policies considered by the planning officer to be material to the determination of the application is not in itself, sufficient to demonstrate that the Council has had regard to all such policies. Indeed the OR's analysis of the application against the Development Plan as a whole appears to be both superficial and selective.

1.2 Thus, whilst the OR (paragraph 27) cites 15 relevant policies in the Black Country Core Strategy (CS), there is no assessment whatsoever of the application against any of these policies. Furthermore, the application is assessed against just 2 of the 13 relevant policies from the Borough Development Strategy (DBDS) listed in paragraph 28 - (policies S6 (Urban Design) and S7 (Landscape Design)). Otherwise the entire policy focus of the report is on the Area Action Plan (AAP), in particular those policies that appear to support the principle of the proposed development.

1.3 It is notable, therefore, that the OR fails to assess the application against any Development Plan policies with which the development appears to be in conflict. This is despite:

- the Council's Historic Environment Officer specifically representing² that the proposal is contrary to Policies CSP3, CSP4, and ENV2 of the CS and contrary to Policies S8, S9 and S11 of the DBDS, and also Policies 2 and Policy 59 of the AAP.
- The Council's Urban Design Officer implying contravention of Policy ENV3 of the CS in concluding that the new vehicle access from the High Street will not make the High Street environment better but make it worse;
- our client's planning agent Marrons Planning highlighting contravention of numerous policies, including

L11 of the DBDS (supported by policy 52 of the AAP – reduction in parking standards for development in the main town centres

ENV3 of the CS, S29 of the DBDS55 and 56 of the AAP – design

S7 DBDS – prioritisation of natural green space landscaping over use of hard landscape

TRAN5 of the CS – flow of traffic around the town centres

1.4 Given the above, the conclusion in paragraph 55 of the OR that *“the development would accord with ... local plan policies”*, is plainly untenable. On any sensible and proper assessment of the proposal against the development plan as a whole the Council could not rationally conclude that it accords with local plan policies, and we are in no doubt that Members are plainly being misled into believing that it does.

2. A failure to accurately report and address material objections to the proposal by the Historic Environment officer and Urban Design Officer

2.1 The OR (paragraph 43) suggests that *“both the Historic Environment officer and Urban Design colleague raise concerns with the scheme as proposed”*. This is, however, seriously misleading as both in fact object to the proposals i.e.

² Consultation response dated 9 May 2022

Historic Environment Officer

- 2.2 The Historic Environment officer “*strongly objects to the proposals and recommends refusal for the reasons set out...*” in a 12 page consultation response dated 9 May 2022, including the impact of the proposals – and in particular the proposed demolition of Unit 1 - on the setting of the Brierley Hill High Street Conservation area and on views into and out of it, and also on the Locally listed drinking fountain.
- 2.3 Where harm to a designated heritage asset (here the setting of the conservation area) is identified the planning authority is required to categorise the level of harm (i.e. substantial or less than substantial). Where such harm is identified as less than substantial, the local planning authority is required to weigh such harm in the balance with any public benefits of the proposal. As the Historic Environment officer rightly points out, however, no economic, social or environmental benefits are identified by the applicant in this case to outweigh the harm to the setting of the conservation area. Thus the application ought properly to be refused.
- 2.4 To suggest that the Historic Environment Officer merely has ‘concerns’ over the proposal is plainly misleading. Indeed the OR simply fails to engage with the Historic Environment officer’s detailed objection at all.

Urban Design Officer

- 2.5 The Urban Design Officer found it “*difficult to support new vehicle access from the High Street*” as “*this will not make the High Street environment better but make it worst*”.
- 2.6 These comments were made in the context of Joint Core Strategy ENV3 (Design Policy) and other relevant planning policies with which it can reasonably assumed that the Urban Design Officer considered the proposals not to comply. Again, simply to categorise such comments merely as concerns is seriously misleading.

3. A misrepresentation of the Strategic Transport Team’s position

- 3.1 At paragraph 22 the OR states that the Strategic Transport Team has “No objections” to the proposal. Again, this is seriously misleading. The Highways Authority has in fact submitted to consultation responses – to the original and revised proposals. In relation to the latter, the HA state:

“The Strategic Transport Team are currently reviewing the submitted documentation and should respond to the case officer shortly”

- 3.2 To add to our client’s concerns over the misreporting of the Strategic Transport Team’s position, the OR appears to fail to engage in any shape or form with the detailed objections submitted on behalf of our client by Highways Access Solutions which include the following:
- the modelling included within the TA is limited to a historic assessment of how the nearby signal junction operated in 2018 – without any detailed consideration of the impacts arising from the proposed development, of weekend flows, future year flows, or of the changes proposed to the local highway on junction operation;
 - the proposed access and site layout raise numerous potential safety issues, especially in regard to pedestrian safety,

- the principle of the site fundamentally conflicts with the modern user hierarchy where the needs of pedestrians take precedence over vehicular users, and where private car users should normally be considered subservient to sustainable modes; and,
 - no Travel Plan has been submitted.
- 3.3 The lack of any consideration in the OR of highway safety is a further serious flaw as highway safety is plainly a material consideration and it is, of course, trite law that a failure to have regard to material considerations will normally render a decision unlawful.
- 5. A misrepresentation of the scheme's compliance with policy in relation to loss of open space**
- 5.1 The OR puts an entirely positive spin on the compliance of the proposals with the Development Plan in the context of loss of POS i.e. paragraph 34 states:
- "However, it is recognised that within the AAP, this area of POS is not identified either as a Primary Public Space nor as accommodating a Primary Thoroughfare. AAP Policies 54 (Primary Public Spaces) and 55 (Primary Thoroughfares), which seek to safeguard and enhance such spaces and routes respectively for these purposes, can therefore not be employed".*
- 5.2 The OR, however, entirely ignores the designation of Moor Centre Square in the AAP and Urban Design SPD as a "Secondary Public Space", which, according to policies 55 and 56 of the AAP,
- "...must be designed with the pedestrian foremost in mind, and make provision for safe pedestrian movement and crossing including provision for people with restricted mobility".*
- 4.3 Dudley Parking SPD also notes that parked cars should not be allowed to dominate the street and space.
- 4.4 Again, therefore, the OR is misleading in failing to identify clear policy conflicts with this proposal.
- 4.5 We would add that the suggestion at paragraph 36 of the OR that *"there is the potential for alternative areas within the wider Brierley Hill High Street area to be enhanced as public open space/public realm to compensate for the proposed loss of (most of) this pedestrian area..."* is not a material consideration and must be ignored. No such alternative areas are identified, and more specifically there are no proposals before the Council for alternative areas of POS in any event.
- 5. Lack of justification for additional parking**
- 5.1 Finally we must comment on the lack of any justification having been given for providing additional car parking spaces in front of the shopping centre. Whilst the applicant opines that this will free up the car parking to the rear of the centre for future development, again there are no proposals before the Council for redevelopment of the rear car park and the application can only, and must, be determined in the context of what is currently on the ground.
- 5.2 Thus, given the current ample car parking for the centre to the rear, there is no justification for providing additional car parking in front of the centre, particularly in circumstances where this will cause harm as identified above.

In conclusion, we cannot otherwise than repeat what is said at the beginning of this letter as to the susceptibility to Judicial Review of any decision to approve the application based on the current OR and recommendation. In the circumstances, we respectfully suggest that the Council should not proceed to any determination at this juncture, but if it does decide to go ahead, to refuse the same.

Yours faithfully

Shakespeare Martineau

Simon Stanion
Partner

D [REDACTED]
M [REDACTED]
[REDACTED]

cc

[REDACTED]

We have seen and reviewed the document and do not agree that the recommendation is legally flawed. Officers do not consider it necessary to update the Officer Report as currently drafted as the content in terms of the recommendation and weight offered to the material planning matters is deemed appropriate.

Nothing contained within the Officer Report as drafted is considered to significantly mislead members when determining the application.

1. The Historic Environment Officer has requested if the following additional conditions can be imposed:

- I. *No works of construction, levels changes, re-grading or other site clearance or infrastructure works involving ground disturbance shall begin until the developer has secured the implementation of a programme of archaeological investigation (in the form of an archaeological watching brief) including appropriate provision for subsequent analysis, reporting and archiving in accordance with a written scheme of investigation (WSI) which has first been submitted to and approved in writing by the local planning authority. The WSI shall be undertaken in accordance with the Chartered Institute for Archaeologists (CIfA) standard and guidance for an archaeological watching brief. Following approval of the WSI all such works will be carried out in accordance with the agreed details.*

REASON: *The site as a whole is of potential archaeological significance and as such it is important that in accordance with Policy S15 (Heritage Assets of archaeological interest, Scheduled Ancient Monuments and Archaeological Priority Areas) of the adopted Dudley Borough Development Strategy, the Council's Historic Environment SPD, ENV2 of the BCCS and paragraphs 194 and 205 of the NPPF that archaeological remains are recorded.*

- II. *Development shall not commence until details/samples of the type, texture, colour and bond of the facing bricks to be used in the wall that will contain the Locally Listed drinking fountain and a sample panel measuring not less than 1m² shall be erected on site and approved in writing by the Local Planning Authority. The panel shall be retained on site for the duration of the development and thereafter new brick work for the elevations and boundary walls shall only be constructed in accordance with these approved details. The development shall be carried out in complete accordance with the approved details and be retained for the lifetime of the development.*

REASON: *To safeguard the quality and visual appearance of the Locally Listed structure and the Brierley Hill High Street Conservation Area in accordance with Policy S11 (Buildings of Local Historic or Architectural Importance) and S9 (Conservation Areas) of the adopted Dudley Borough Development Strategy and Policy 2 (Brierley Hill High Street Conservation Area) and Policy 59 (Conservation and enhancement of local character and distinctiveness in Brierley Hill) of the Brierley Hill Area Action Plan.*

- III. *The development hereby approved shall not be occupied until details of an interpretation panel to be installed on the site have been submitted to and approved in writing by the local*

planning authority. The panel shall thereafter be installed in accordance with the approved details, and in accordance with a timetable to be submitted to and approved in writing by the local planning authority. The interpretation panel (describing the history of the site) shall thereafter be retained for the lifetime of the development.

REASON: *The development impacts upon heritage/archaeological assets and the provision of interpretive materials about these heritage assets is required, this is in full accordance with the Council's Planning Obligation SPD and Historic Environment SPD but also in accordance with Policy S15 (Heritage Assets of archaeological interest, Scheduled Ancient Monuments and Archaeological Priority Areas) of the adopted Dudley Borough Development Strategy and ENV2 of the BCCS and Para 205 of the NPPF.*

- IV. Development shall not begin until a Schedule of Works/Repairs Schedule and methodology for re-siting of the Locally Listed drinking fountain has been submitted to and approved in writing by the Local Planning Authority. Any departure from the approved schedule of works/repairs schedule/methodology will require the prior written approval of the Local Planning Authority.

REASON: To safeguard the architectural and historic integrity of the Locally listed structure in accordance with Policy S11 (Buildings of Local Historic or Architectural Importance) of the adopted Dudley Borough Development Strategy.