



Appeal Decision

Site visit made on 5 January 2022

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th July 2022

Appeal Ref: APP/N1350/W/21/3283373

Former (Bank Top) Coal Depot Site (Land adjacent to train lines), Melland Street (far eastern end), Darlington DL1 1SF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr William Gate against the decision of Darlington Borough Council.
 - The application Ref 21/00721/CU, dated 16 June 2021, was refused by notice dated 2 September 2021.
 - The development proposed is change of use of land to Use Class B8 storage and/or distribution (noting this class includes open air storage).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr William Gate against the Darlington Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the submission of the appeal, the Darlington Local Plan (DLP) February 2022 has been adopted. The Council has confirmed that the Borough of Darlington Local Plan 1997 and the Darlington Borough Core Strategy 2011, which are cited in the Council's putative reasons for refusal, no longer form part of the development plan and I make no further reference to them in my decision. The Council has also provided comment upon DLP policies and their relationship with the policies of the former development plan as referred to in the reasons for refusal. I have taken the comments of both parties into account in respect of this matter, and I have determined the appeal accordingly.
4. From the submissions of both parties, it seems that the appeal site's planning history is uncertain and largely undocumented even if it is broadly agreed that the site has been used as a coal storage yard and depot. However, the details of that use, including when it was last used as such, are unclear. Nevertheless, the appellant's position is that this provides a strong basis for considering that there is a 'fallback' position.
5. However, whilst I have carefully considered the submissions of both parties in this respect, the level of detail submitted is limited to the extent that it is not possible for me to conclude that there is a real (or greater than theoretical) prospect of that 'fallback' position being implemented. Nor is it for me, under a

section 78 appeal, to determine whether or not that use has subsisted, has been abandoned or what the lawful use of the site might be. To that end, it is open to the appellant to apply for a determination under sections 191/192 of the Act and my determination of this appeal under s78 does not affect the issuing of a determination under s191/192, regardless of the outcome of this appeal. I have determined the appeal accordingly, on its merits and on the basis of the evidence made available to me.

Main Issues

6. The main issues are the effects of the proposed upon:
 - Highway and pedestrian safety; and
 - The character and appearance of the surrounding area.

Reasons

Highway and pedestrian safety

7. Melland Street is a relatively narrow road leading to Melland Court and serving a number of residential properties on the way. Notwithstanding the nearby commercial presence of buildings and businesses which front on to Parkgate, and which in turn back on to Melland Street, Melland Street is nevertheless predominantly residential in its character.
8. The road terminates at a narrow point on an incline leading to the appeal site. The site itself is broadly level across its extent and is set above both Melland Street and Parkgate but below the adjacent East Coast Main Line (ECML) railway. The site's interior is largely hidden from view from Melland Street but is visible from elevated positions on the ECML and from North Eastern Terrace on the opposite side of Parkgate.
9. The site's previous use is uncertain, although it seems likely from the submissions of both parties that it has been used as a coal storage depot in the past. However, it is also clear from submissions that the site has not been used, regularly or otherwise, for an extended period of time. Other than access to the appeal site itself, Melland Street does not appear to provide direct or regular access to the commercial sites and premises which front Parkgate. Both the prevailing character of Melland Street, and the nature of the street itself, is essentially residential; residential in terms of its character, its appearance, its width and the layout of parking along it.
10. Notwithstanding the site's relative proximity to commercial uses and a busy road, the accessing of the site for deliveries and collections in connection with a storage and distribution yard would be incongruous in the current context of the street and its usage. Houses are closely set relative to the road and the entrance into Melland Street is tight and restricted in part by on-street parking.
11. Changes in the nature or levels of use associated with a storage and distribution use when compared with the site's current usage would be likely to present a noticeable change in the nature and level of use of the road. Moreover, although uncertain given the lack of detail regarding the exact nature of the proposed storage and distribution use, it is likely that the nature of the vehicles using the road would also be subject to change. Whilst I accept that this may vary within a range between large heavy goods vehicles to

smaller light commercial vehicles, a reliance on Melland Street for such vehicles to access and leave the site would be at odds with the street's prevailing and essential character.

12. The dearth of detail regarding the nature of the use also translates to the site's proposed layout. It is noted that the appellant states that ground will not be broken within the site. This suggests flexibility in how the site might be laid out for storage purposes and the nature of that storage. I accept that the scope of storage operations possible within the proposed broad use class brings with it implied levels of flexibility. However, the Council are correct to be concerned that that flexibility, likely to also extend to access, manoeuvring and parking within the site, suggests that these arrangements may well be fluid and the implications for the surrounding highway network uncertain. Given the predominantly residential nature of that highway network, that fear is well-founded and the nature and layout of Melland Street does not in my judgement lend itself to being able to cope with a likely level of flexibility (uncertainty). Thus, manoeuvring, turning and waiting vehicles would all have the potential to disrupt the operation of Melland Street which is predominantly residential.
13. Nor, within the broad context of uncertainty surrounding the proposal, has it been demonstrated that the proposal could be safely accessed by pedestrians, notwithstanding its central location within Darlington. The existing footways along Melland Street terminate short of the appeal site and, given the uncertainties around the internal layout of the site and some level of assurance that adequate turning and manoeuvring provision could be provided and thereafter maintained, resulting conflict may be likely.
14. The existing parking patterns and parking restrictions of Melland Street may well act as a form of natural traffic calming. However, such 'natural' methods of traffic calming, should they arise, are only likely to calm traffic to a limited degree, beyond which their combination with an uncertain, but likely altered, pattern and nature of usage would not be conducive to highway or pedestrian safety.
15. In these respects, I share the Council's concerns regarding the absence of details regarding the anticipated intensity and nature of use and the nature of vehicles likely to access the site. Without more than just vague indications of how the site may operate, I am not persuaded that highway and pedestrian safety would not be compromised. Nor am I persuaded that conditions could mitigate potential impacts in terms of vehicle movements and provisions within the site given the concerns regarding the absence of detail set out above.
16. As such, the proposal fails to demonstrate that highway and pedestrian safety would not be harmfully and materially compromised, contrary to DLP policies DC1, DC4, E2, IN1 and IN4. For the reasons set out in the preliminary matters, above, the weight that I give to the appellant's argument regarding a potential 'fallback' position is very limited and does not persuade me against the harm I have identified.
17. Nor do I give weight to previously approved but long since lapsed schemes¹ for the residential redevelopment of the appeal site. As residential developments, the nature of the traffic generation associated with them may well have been more akin to those of existing residential properties on Melland Street, even if

¹ LPA Ref Nos: 05/01181/FUL (withdrawn), 06/00668/FUL (approved) and 07/0117/FUL (approved)

the number of units proposed in those schemes was not insubstantial based upon the description of the number of units. However, no details of those permissions have been provided to me beyond a very brief description of the proposals. Nor should too much be read into the quantum of development and the effects of traffic generation, given the site's location relative to the town centre and the railway station. In any event, those schemes and the circumstances in which they were considered, are now of some considerable age and provide neither a comparable basis nor a counter-point argument to justify the current proposal.

Character and appearance

18. The appeal site lies directly adjacent to, and below, the elevated tracks of the ECML. It also shares a partial boundary with a commercial car repair garage. The presence of the railway-line and the commercial building provide a degree of context for the proposed storage use of the appeal site.
19. The site itself stands slightly apart from those residential properties. Furthermore, the site's substantial brick boundary wall and the undergrowth on the embankment up to it afford the interior of the site a degree of screening from these residential streets and properties. Suitably worded conditions could limit the height of storage, whether it be open or covered, so as to limit the extent to which a storage use would be experienced from those residential streets.
20. However, despite the nearby presence of commercial buildings adjacent to Melland Street, they do not appear to presently be accessed from it, whereas access to the appeal site, along Melland Street, would be through an area predominantly residential in character. Thus, a potential escalation in the use of this residential street by commercial vehicles of uncertain size and uncertain frequencies would alter the character of the street in terms of patterns of usage, and also in terms of the noise and disturbance, in a predominantly residential context, arising from those patterns. In the absence of compelling evidence to the contrary, it has not been adequately demonstrated that the proposed use would not cause harm to the living conditions of residents of Melland Street and the streets leading off it, and thus their residential character, through changing patterns of usage and access to the site and the nature of vehicles accessing the appeal site.
21. For these reasons, the proposal would be in conflict with the aims and provisions of DLP policies DC1, DC4, E2 and IN4. Together these policies seek to ensure that new development protects the character of existing areas through, amongst other things, the compatibility of the nature of the proposed use with the character of surrounding areas and the access thereto. For the reasons I have set out, the proposal fails to demonstrate that it would achieve these aims and provisions. Nor, for the reasons set out in the preliminary matters, above, can the weight that I give to the appellant's argument regarding a potential 'fallback' position be any more than very limited and does not persuade me against the harm I have identified.

Other Matters

22. I note the uncertainty regarding the exact nature of the proposed storage and potential concerns regarding implications arising from the site's proximity to the ECML. Whilst it would be difficult to concisely, accurately and reasonably

frame conditions to control the nature of the storage use, as I have found harm in respect of the main issues set out above, I have not considered this matter further.

23. The proposal would re-use an area of currently vacant land which carries some weight in favour of the proposal, albeit limited as a consequence of the harm that I have identified above. The site is also reasonably well-located, close to the town centre and to the railway station. However, and setting aside the broad nature of storage possible within use class B8, the sustainability benefits of the proposal being located close to the main-line passenger railway station are not clearly explained, and I give this matter limited weight as a consequence.

Conclusion

24. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR