



Appeal Decision

Hearing Held on 24 August 2022

Site visit made on 25 August 2022

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2022

Appeal Ref: APP/W1850/W/21/3279731

**Land south of Leadon Way (A417) and east of Dymock Road (B4216),
Ledbury, Herefordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission (noting part of the overall application which is not contested also entailing outline permission and access as a detailed matter).
 - The appeal is made by Deeley Properties Ltd against the decision of Herefordshire Council.
 - The application Ref 201718, dated 28 May 2020, was refused by notice dated 28 January 2021.
 - The development proposed is a hybrid planning application comprising of: an application for full planning permission for the erection of a children's day nursery (Use Class D1) and food store (Use Class A1) including access, car parking, landscaping and associated work; and an application for outline planning permission for the erection of a medical centre (Use Class D1), with access and all other matters reserved.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In the lead up to the appeal the Council confirmed that reasons 2 to 4 (relating to sequential test issues, town centre heritage asset implications, and highways mitigation) specified in their Decision Notice were no longer in dispute.
3. Moreover, they also confirmed in advance of, and during proceedings that reason for refusal number 5 relating to local infrastructure provision could be satisfied by an appropriately worded legal agreement. A planning obligation was subsequently considered at the hearing, which had been subject to prior formulation between the main parties. Thus, my decision focuses on the remaining issue in dispute including the policy context it is considered within.
4. The draft Ledbury Neighbourhood Development Plan 2022 was acknowledged at the hearing to be at Regulation 14 stage and accepted by the main parties to carry limited weight. I have no reason to take a different view.

Main Issue

5. The main issue is the retail impact of the development having regard to relevant policy and the vitality and viability of Ledbury Town Centre.

Reasons

Policy and background

6. At my site visit I could see that the appeal site is a large undeveloped field approximately one mile from Ledbury Town Centre. Surrounding nearby uses include housing, a small business park and a public house.
7. I acknowledge that the Herefordshire Local Plan Core Strategy 2011-2031 (CS) identifies Ledbury as a 'Secondary Centre' in the retail hierarchy it establishes. Hereford being above it, approximately 15 miles away. CS Policies E5, E6 and LB1 aim to safeguard the vitality and viability of the county's town centres. Policy E5 confirms that town centre uses in out of centre locations will be subject to the sequential test as described by the National Planning Policy Framework (the Framework).
8. Additionally, CS Policy LB1 details that a local impact threshold of 400m² applies to any retail proposal in an out of centre location.
9. The Ledbury Neighbourhood Development Plan 2018 (LNDP) also forms part of the Council's development plan. It has an overarching aim to protect and enhance Ledbury's role as a market town. It seeks to nurture and cherish the town centre's vibrant retail core.
10. Objective EE3 of the LNDP promotes the town centre as the destination of choice for retail, leisure and community activities, in order to enhance the appearance and historic character of the town. Policy EE3.1 of the LNDP specifically encourages retail uses within primary and secondary shopping areas. The primary retail area being along The Homend and High Street with secondary provision on intersecting streets in mews settings.
11. Aside from those policies, the LNDP provides me with other useful information about the function of the town centre. It highlights the prestige of the market granted under a Charter by Queen Elizabeth I in 1584 and that Ledbury has a mix of independent shops to meet general local needs.
12. The town centre features prominent listed buildings within a designated Conservation Area, offering interest to tourists and historians alike. I note good levels of independent retailers and niche shopping opportunities are noticeable characteristics of the town. Vacancy rates are accepted by the main parties as being around 7% and below the national average.
13. Nearby attractions such as the Malvern Hills Area of Outstanding Natural Beauty, Eastnor Castle and Cheltenham racecourse are cited by the LNDP as additional reasons for using hotels or bed and breakfast accommodation within the town centre, alongside a range of locally led events.
14. With respect to the local retail study evidence base available, the Herefordshire Council Town Centre Study 2012 is of some age. I recognise its forecasts of qualitative and quantitative floorspace needs of 846m² and 1,946m² are superseded by the changes in local retail provision occurring since its publication. The approval and trading of the out of town Aldi store on Leadon Way being a particularly notable change. Therefore, I give the study little weight.

Retail impact

15. The main parties refer me to their respective retail impact assessments offering opposing conclusions on whether there would be an adverse effect.
16. I note that the Council's retail impact assessment commentary does not directly address impacts to market trade whilst disputing the level of sensitivity to the towns existing retail offer. Yet, the LNDP highlights the demand for locally produced food is well established and an important element of the economic wellbeing of the town.
17. In terms of wider relevant points, I accept that some small convenience shops such as the 'Spar' and 'One Stop' in the Town Centre would have a degree of resilience to potential trade impacts. That is because they are most convenient for different types of shopping trips, where walk in visits for small purchases would be most common.
18. That said, many visits to Ledbury Town Centre would be conducted for differing reasons. Indeed, the survey information referred to by the appellant highlights around 56% of those surveyed have a Ledbury postcode, compared to those coming from elsewhere. In addition, a significant proportion of Ledbury's population, at some 25% are identified as being 65 or older in the LNDP.
19. There is agreement between the main parties that the majority of Lidl's expected trade draw would be from Ledbury's three existing supermarkets: Aldi, Tesco and the Co-op. The appellant refers to the trading similarity of Aldi and Lidl, the proximity to the appeal site, and information from its household survey as reasons why trade draw from Aldi would be the greatest.
20. However, the Council when drawing on Table 8c in the appellant's retail rebuttal contend that those reasons do not justify the adjusted convenience impact from Aldi (at some 30%) being almost double that of Tesco (at around 16%). The assumed 2025 turnover estimates for Aldi and Tesco being similar at £12.67m, and £13m respectively (also as per Table 8c). I agree the percentage figure for Aldi seems excessive relative to Tesco. Likewise, accepting that approximately 27% would be the convenience impact for the Co-op seems out of kilter with their assumed low monetary turnover.
21. Separate to those issues, the appellant details trade draw estimates for the impact on the 'One Stop' and 'Spar' shops alongside 'Other Shops' operating in the town centre. They identify thirteen 'Other Shops', plus the markets which sell convenience and comparison goods including: a butcher's; a bakery; a fruit and veg store; wine stores; specialist food retailers; and a delicatessen. I note that the fruit and veg and sweet shops accounted for have since closed.
22. I recognise that the presence of some quality products in Lidl's ranges would widen its appeal to more affluent shoppers, as well as shoppers with lower levels of disposable income. In that regard, the Council's retail advisor cites that Lidl often features in published surveys comparing supermarket products, for both food and wine.
23. For those reasons, I agree a discount food retailer such as Lidl is also likely to influence trade at the quality end of the market, where there are specialist independent shops and market traders. Thus, even acknowledging reduced impact estimates, I accept that the impact on 'Other Shops' would be at an unacceptable adverse level.

24. I appreciate comparison goods trade diversions arising from the proposed store are not suggested as being a key concern in the Council's overall case. Excluding the Co-op, the appellant (via Table 8c of their retail rebuttal) summarises the adjusted convenience impact on the town centre to be 10% (the Council finding it to be 14.3%) and the combined convenience and comparison estimated total impact on the town centre to be 1.9%. That latter combined total figure is plausibly influenced by the small scale of comparison trade diversions.
25. Additionally, the relative importance of the Co-op and Tesco stores in supporting the town centre by way of linked trips is a substantial area of disagreement.
26. The appellant refers me to a survey of 302 shoppers carried out in four different locations within Ledbury Town Centre. In light of that information, the Council highlights that around 44% of the respondents are from outside the Ledbury postcode area. Thus, they are least likely to be visiting the Co-op and Tesco supermarkets in addition to their town centre visit. They say it is the residents of Ledbury (equating to around 56% of the total respondents) that are most likely to be visiting the Co-op and Tesco supermarkets.
27. I accept that the town centre survey responses would be strongly influenced by a variety of factors, such as: the home address of the visitors; age profile; seasons of the year; the week day; and the specific locations where the surveys were taken. Thus, the latitude available within those variables strongly suggests to me that the appellant's retail impact assessment underestimates the supporting roles that the Co-op and Tesco play for Ledbury residents, and the subsequent overall implications to the town centre.
28. Local trade sensitivity of independent shops and markets attributed to Ledbury is of particular note. Ultimately many elements of the opposing figures and conclusions argued by the main parties are based on estimates. I have treated them as such.
29. Although the combined comparison and convenience total impact figures for the town centre are low, they are not inconsequential. Relying on the appellant's estimations in Table 8c of their rebuttal, a total trade diversion of £639,283 can be expected. Moreover, I am not bound by a total impact threshold figure in making my overall decision.
30. Whilst wider visitors are a major support towards town centre vitality and viability, Ledbury's town centre also provides a good range of shops and services for its residents. Thus, I agree Ledbury is different from many other tourism or non-local visitor reliant towns.
31. The desirability of maintaining a strong town centre with a balanced offer that is attractive to both residents and visitors is a crucial element of my decision. I recognise that the small convenience shops and market play a key role in maintaining an appropriate shopping offer balance. They are also part of Ledbury's attractive qualities.
32. Based on the evidence there is likely to be a direct erosion in town centre trade which would represent a significant adverse impact on existing vitality levels. For other town centre locations, a balanced shopping mix may not be as critical to their vitality, but not in the case of Ledbury.

33. The extent to which the Tesco and Co-op stores play a role in supporting the town centre, by virtue of linked trips and resultant spin-off trade is equally important.
34. The existing edge of centre stores are favourably situated towards either end of the main high street. They both feature convenient customer parking which reinforces access to other shops. Local residents would be inclined to regularly use the stores and parking areas relative to other reasons for making regular linked visits. The presence of Bye Street public car park roughly half way down the high street being a further parking option.
35. Irrespective of any broader capacity, comparison or convenience retail arguments, I find that the function of the existing edge of centre stores to play a greater role in vitality and viability levels than that suggested by the appellant. I am also conscious that online grocery delivery and collection services are part of a modern day shopping economy which can influence travel.
36. I have substantial concerns that allowing a second out of town store of the scale proposed poses serious risks to maintaining low vacancy rates and the continued economic success of Ledbury's retail centre. It would divert trade away from the retail core. The effect would be harmful.
37. I find that the overall retail impact of the scheme would have a significant adverse effect on the viability and vitality of Ledbury Town Centre. It would be contrary to Policies SS1, LB1, E5 and E6 of the Herefordshire CS, Policy EE3.1 of the LNDP and Section 7 of the Framework which combined seek to protect and enhance the role of town centres and are aligned to securing sustainable forms of development.

Planning obligation

38. Outside of the main issue the appellant agrees to make a financial contribution of £42,008 towards delivering sustainable transport infrastructure in the local area via a submitted planning obligation.
39. The transport infrastructure improvements anticipated would include but are not limited to: a town trail refurbishment (in the Orchard Lane to Bye Street sections, and south of Bye Street); a town trail crossing on Bye Street aiming to slow traffic and improve pedestrian crossing movements; or cycle improvement measures on New Street with links to the town trail.
40. The capital investment projects listed are linked to existing Council led public realm improvement initiatives, allowing for some delivery flexibility. Nonetheless, they have a direct relationship to the scheme appealed. Accordingly, I am satisfied the terms of the planning obligation would meet the relevant policy and statutory tests referred to in the Framework and Planning Practice Guidance.
41. Such provision would be in line with Policies LB1, ID1 and MT1 of the Herefordshire CS and the Council's Supplementary Planning Document on Planning Obligations, which all combined seek to ensure that new development provides adequate mitigation and support for local infrastructure provision, as well as improving accessibility levels.

Other considerations

42. A sequential test has been applied by the appellant. As directed by the Framework, there are no sequentially preferable sites within the town centre or in edge of centre locations.
43. When applying Paragraph 86 e) of the Framework there is no identified need for further retail provision referenced by the development plan or from an up to date local retail study.
44. The main parties agree that there are no impacts to existing, committed and planned and private investments in the catchment area of the scheme which are considered to apply. I have no evidence to the contrary.
45. The benefits of the scheme purported include: supporting growth of the town; the delivery of additional nursery and medical facility capacity in Ledbury, where there is an identified need and demand; that the position of the food store combined with the other appeal site uses would enable linked trips for local residents; economic benefits including the provision of 200 jobs during the construction phase and 65 jobs at the nursery and food store; making effective use of land; and good levels of site accessibility at a location with low environmental sensitivity to new development relative to other parts of Ledbury.
46. Furthermore, a list of approved developments near to, or adjoining the site, including the granting on appeal of outline planning permission for 321 dwellings on land south of Leadon Way is referred to. I have taken into account the expansion occurring, and that the appeal site would be surrounded on all sides by a mixture of residential and commercial development.
47. I recognise there would be some tangible benefits associated to the appeal scheme that are encouraged by other parts of the Council's development plan when read as a whole, as well as the Framework.
48. Even so, I do not find that combining a main town centre use, of the scale proposed, in an out of town centre location with the other uses implied would be a positive factor in relation to the long term viability and vitality of the town centre. The appellant's technical assessments do not give me confidence such combined impacts would be inconsequential to the resultant day to day footfall within Ledbury's primary and secondary shopping areas.
49. Separate to that point, at the hearing it was suggested an existing town centre medical facility is anticipated to close in, or around, 2027. Whilst the LNDP highlights Market Street as being appropriate for improved medical facilities, the Statement of Common Ground agreed concedes that owing to new housing development, some medical facility provision on the appeal site would help meet the sustainability criteria within LNDP Policy SD1.1 as well as the provision of increased facilities in Policy CL2.1.
50. The discussions with local medical practitioners evidenced gives me some positive assurances of delivering a new facility. But there is no binding planning commitment which would guarantee all of the uses would be successfully delivered if the appeal was allowed. I also have no reason to discount scope for other buildings or sites, to be utilised for replacement or new medical facilities, or nursery accommodation, in the absence of any clear commitments.

Planning Balance and Conclusion

51. Paragraph 12 of the Framework specifies that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Nonetheless, it also states that local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
52. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
53. The appellant's arguments are three folds. Their primary case is that the scheme complies with the development plan. I disagree with their primary case for the reasons already detailed under the main issue.
54. The secondary case posed by the appellant is that in the event of conflict with the development plan being identified, the most important policies for determining the application are out of date, owing to the lack of policies to meet identified needs (including for children's day nurseries and medical centres) and the lack of policies that respond to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. Thus, the appellant advocates that the proposal ought to be determined in the context of the tilted balance within paragraph 11(d)(ii) of the Framework, wherein the harms do not significantly and demonstrably outweigh the benefits.
55. I have taken into account that the existing development plan is silent on some of the local need issues raised. Nonetheless, that does not equate to the most important determinative policies being out of date.
56. Chiefly, the development plan policies encouraging town centre uses in appropriate locations are not out of date. Those policies are consistent with the advice of the Framework. They are also the most important policies to have regard to in the dispute before me concerning the retail impacts of a new supermarket relative to its location.
57. The impact threshold of CS Policy E5, at 400m² is markedly below the 2,500m² impact figure contained within the Framework and is reflective of potential local impact sensitivities attributed to Ledbury. There would be conflict with the Council's development plan arising from the main issues of the case which would harm the vitality and viability of a town centre. Section 7 of the Framework seeks to safeguard. Accordingly, the scheme would not represent a sustainable form of development.
58. In any event, turning to the tertiary case mentioned by the appellant. Their position being that the benefits of the proposal justify the grant of planning permission contrary to the development plan.
59. I have carefully considered the range of benefits put forward and public support for the scheme. In particular, there would be significant job creation during construction phases and job creation during any future operation of the scheme. Nevertheless, I do not find those or the other benefits referred to would outweigh the harm arising to the long term success of the town centre.

60. The appeal proposal would establish a second food retail store in an 'out of centre' location. A second out of town centre store of the scale proposed would magnify trade draw effects on the existing edge of centre supermarkets giving rise to reduced town centre footfall from linked trips. It would erode trade from existing independent stores and markets forming Ledbury's retail core.
61. Even if most trade is diverted from the existing out of town food store (Aldi), I do not accept the overall retail impact of the appeal scheme would be inconsequential to the overall vitality and viability of a town centre renowned for regular market days selling local produce and having a mix of independent shops meeting local needs.
62. I am cognisant that the long term success of Ledbury Town Centre relies on multiple factors. But the retail elements of the scheme appealed would be a substantial long term reason for local residents not to visit it. It would run counter to adopted strategic aims which reinforce the status of the town centre as the main shopping destination for local people. The overall effect would be significantly adverse.
63. In conclusion, taking all matters raised in the round I do not find the overall benefits of the development would outweigh the adverse impacts.
64. For the reasons given above the appeal does not succeed.

M Shrigley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Killian Garvey	Barrister, Kings Chambers
Michelle Davies	Director, DPP
Eleanor Deeley	Deputy Managing Director, Deeley Group Ltd
Ed Thomas	Director, Tompkins Thomas Planning
George Ledward	Regional Head of Property, Lidl
Julian Smith	Alderking
Simon Allen	Simon Allen and Associates
Phil Pratt	Alderking
Dean Weldon	Deeley Group

FOR THE LOCAL PLANNING AUTHORITY:

Chloe Smart	Principal Planning Officer
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Yvonne Coleman	Planning Obligations Manager
James Williams	Retail Consultant
Heather Carlisle	Principal Planning Officer
Tracy Carroll	Technical Support Officer
Helen Mills	Technical Support Team Leader

INTERESTED PARTIES:

Cllr John Bannister	Ledbury Town Council
Cllr Harvey	Herefordshire Council
Cllr I'Anson	Herefordshire Council
Martin Robeson	MRPP (on behalf of Tesco Stores Ltd)
Matthew Morris	Avison Young (on behalf of Aldi Stores Ltd)
David Austin	David Austin Associates, Observer
Rhydian Griffiths	Lidl, Observer
Habeeb Hussain	Observer
Ksenia Mironenko	Observer
Andrew Brazier	Observer
David Currie	Observer
Lisa Carpenter	Observer
Oliver Marshall	Observer

DOCUMENTS SUBMITTED DURING THE HEARING:

None.

DOCUMENTS SUBMITTED AFTER THE HEARING:

A signed planning obligation/ condition.