SOUTH HOLLAND DISTRICT COUNCIL

Town and Country Planning Act 1990

Refusal of Planning Permission

Reference: H16/0265/94 Received:30-MAR-94 Type:FULL

Name: Macs Supermarkets Ltd
Graham House
7 Wyllyotts Place
Potters Bar
Herts EN6 2JD

Agent: Jeffrey Taylor Associates
76 Gurney Court Road
St Albans
Herts
AL1 4RJ

Description: Neighbourhood Centre - convenience store & two retail units with flats above (inc. fast food takeaway unit)
Location : Wygate Park Spalding
Lincs

South Holland District Council hereby give notice that PERMISSION HAS BEEN REFUSED for the development for the following reason(s):

1 In the opinion of the Local Planning Authority the development as proposed would, if permitted, adversely affect the residential amenities of existing and proposed dwellings situated near the site because of noise and activities associated with the proposed development and particularly in relation to the disturbance likely to be caused as a result of the proposed takeaway food facilities.

2 The development of the site proposed would, if permitted, prejudice the successful implementation of the development strategy for the area, since it would be likely to prejudice also the viability of the alternative site identified by the Council as being more appropriate, which by contrast with the proposed site, is adjacent to an area of open space and at the confluence of road, footways and cycleways with the potential therefore to accommodate in addition to retail development a range of communal facilities.

The applicants are advised that the District Council considers that a more appropriate site exists for this development as shown on the plan attached to the decision notice.

Director of Planning and Building Control Services
08-AUG-94 H16/0265/94

This decision refers only to that required for the purposes of the Town and Country Planning Act and not for Building Regulations or any other legislation. See enclosed notes relating to rights of appeal.

BRIAN SMITH Dip TP MRTPI Director of Planning & Building Control Services

Planning & Building Control Department, Council Offices, Priory Road, Spalding, Lincolnshire. PE11 2XE (Tel: 0775 761161)

The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh C

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0272-8
Switchboard 0272-8
Fax No 0272-1
GTN 1374

Webb & Partners Limited
Graham House
7 Willyotts Place
POTTERS BAR
Hertfordshire
EN6 2JD

S.H.D.C. PLANNING DEPT.
RECEIVED
26 JAN 1995

Your Ref:

Our Ref: T/APP/A2525/A/94/242724/P2

Date: 24 JAN 1995

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY MACS SUPERMARKETS LTD (NOW KNOWN AS MACS NEIGHBOURHOOD CENTRES LTD)
APPLICATION NO: H/16/0265/94

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the South Holland District Council to refuse planning permission for a convenience store and 2 retail units with flats above on land at Wygate Park, Spalding. I have considered the written representations made by you and by the Council and also those made by interested persons, including a petition from the Residents' Action Group. I have also considered those representations made directly to the Council at application stage and forwarded to me. I inspected the site on 13 December 1994.

2. Part 7 of the application form states that one of the units would be used as a fast food takeaway which would fall within Class A3 of the Town and Country Planning (Use Classes) Order 1987. The Council has considered the proposal on that basis so I am dealing with it in the same way.

3. In the adopted Spalding and Pinchbeck Local Plan, Policy S4 allows for small scale shopping development to serve local needs, provided that it does not prejudice the aims of Policies S1 and S3 to safeguard shopping provision in Spalding and Pinchbeck Town Centres. Wygate Park is a new development of over 1000 dwellings currently under construction, and the Council raises no objection in principle to a neighbourhood retail scheme. I therefore consider the main issue to be: the likely effects of the proposal on the living conditions of residents, in particular in terms of noise and disturbance.

4. An application has been made for an alternative site, and the Council is undertaking a review of the Development Brief on the provision of shops. The other site is said to be more appropriate in relation to open space, cycle routes and the opportunity to provide other community facilities. However, it is not included in any plan and has not been the subject of

public consultation, nor is it the proposal before me. Furthermore, the Council's review is at such an early stage that I can accord it only limited weight.

5. The approved development brief for Wygate Park makes no requirement for shops so residents had no warning that shops might be erected on this site. However, it does state that developers may consider the provision of additional facilities if the demand arises as development proceeds. In addition, Government advice in PPG13 supports local shopping centres to which people can travel on foot or by bicycle and thus reduce dependence on the private car. The proposal is for less than 400 sq m of floorspace which in my view would be a small scale shopping centre intended to meet local needs.

6. A distributor road separates the site from the established housing to the south, and this will link Woolram Wygate to Monks House Lane and Bourne Road to the south. Bearing in mind the level of traffic which the road will carry, I do not consider that the movement of cars and delivery vehicles likely to be generated by a development of this scale would be a significant addition in terms of noise and general disturbance. A day care centre on the other side of the new estate road from which the access would be taken is separated from the road by its own parking area. In view of the scale of the scheme I do not consider that the use of the access would be likely to disturb users of the centre.

7. New housing which is to be erected adjacent the site can be designed to minimise impact from the scheme, and I consider that appropriate boundary treatment and hours of use restrictions would ensure there is minimum disturbance to future residents from the use of the service area. In my view activities associated with the hot food takeaway would be largely contained within the site, and a restriction on opening hours would guard against disturbance to residents at unsocial times. In all these circumstances, I conclude that the scheme would not result in harmful noise and disturbance to existing and future residents.

8. Objectors to the scheme are concerned as to the likely impact on the viability of other shops in the vicinity, and the cumulative effect on the town centre having regard to other permitted shopping floorspace. However, competition between retailers is not a planning issue, and I have no reason to consider that a scheme of this scale, within a neighbourhood of growing population, would have a damaging impact on any nearby shopping centre. In view of the other shops in the area and the modest scale of this scheme, I consider it unlikely that any significant number of shoppers would be drawn into the site from the wider area.

9. Since there would only be a marginal increase in traffic on the distributor road from the proposal I consider it unlikely that there would be safety implications for children attending the nearby school. I find no reason why the

proposal should undermine any future plans for traffic calming in the neighbourhood. The potential congregation of youths and any problems of litter are matters of public order and the management of the centre; a scheme for the control of odours from the hot food takeaway could protect residents from fumes; and the erection of floodlights would require a separate planning permission. I find no reason to withhold permission on any of these grounds. In the absence of any demonstrable harm, I do not consider it necessary for the appellant to demonstrate a need for the development.

10. Conditions are put forward by the Council should I be minded to allow the appeal, and I have considered advice in Circular 1/85. In the interests of visual amenity I consider that revised elevations to the east and west of the building; details of materials for the buildings and the areas of hard surfacing; a scheme of landscaping and a restriction on advertisements would be appropriate. Since this is a commercial site, within a residential area, a requirement for maintenance of the landscaping over 10 years would also be appropriate. To protect residential amenity, restrictions on hours of use of the shops and the service area, and on use of diesel powered refrigerated units would be necessary; together with a suitable screen around the service area. I also consider that a scheme for the control of fumes from the hot food takeaway would be appropriate.

11. In the interests of highway safety I consider it appropriate to restrict pedestrian access from the adjacent roadway; to require the provision of the hardsurfacing for parking and servicing before the units are opened; and to ensure that adequate vision splays are maintained in the interests of highway safety. Footways should be constructed and the highway made up before the use is commenced, but I find no reason to require the laying of the carriageway basecourse or kerb foundations at an earlier stage.

12. I have had regard to all the other matters raised but they do not alter or outweigh the considerations which led to my conclusions.

13. For the above reasons and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for a convenience store, a retail unit and a fast food takeaway with flats above on land at Wygate Park, Spalding in accordance with the terms of the application (No H/16/0265/94) dated 16 March 1994 and the plans submitted therewith, subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;

2. no development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include details of positions, heights on planting, and species of trees and shrubs. The scheme shall incorporate the principles of planting as exist elsewhere along the new distributor road, and shall make provision for planting along the western boundary of the site, in addition to those areas identified for planting on the submitted plans;

3. all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building; and any trees or plants which within a period of 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation;

4. a scheme for the hardsurfacing of the car park, service yard and access ways and the provision of space for the loading, unloading and parking of vehicles shown on drawing no 374 DO3A shall be submitted to the local planning authority for approval before the commencement of works, and the approved scheme shall be implemented before the scheme is open for trading;

5. no development shall take place until there has been submitted to and approved by the local planning authority details of the type and colour of the materials to be used for external walls and roofs of the buildings;

6. no development shall take place until there has been submitted to and approved by the local planning authority revised details of the eastern and western elevations of the building to provide breaks in the brickwork;

7. notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) Regulations 1992, no advertisements or signs shall be displayed either on the building or within its curtilage without the prior submission and approval of an application for express consent, other than for advertisements shown on the submitted plans for display on the shop fascias;

8. noise emitted from fixed plant and machinery shall not exceed a level equivalent to 35dB expressed as a 5 minute LAeq measured at a distance of 3.5m from any residential facade;

9. a mains electric plug-in facility shall be provided to permit refrigerated transporter units visiting the building to maintain refrigeration. Diesel powered refrigerated transporter units shall not be operated in the site. Signs instructing delivery persons of the latter requirement and of the plug-in facility shall be displayed at the service entrances and within the service areas;

10. no deliveries shall be made to the site on Sundays or Bank Holidays or between 18.00 and 08.00 on any other day;

11. opening hours for the shops and the hot food takeaway for customers shall only be from 08.00 to 20.30 on any day;

12. no development shall commence until a scheme for the control of fumes and odours from the premises has been submitted to, and approved in writing, by the District Planning Authority and the scheme shall be implemented before the start of the use hereby permitted.

13. before the commencement of use of the access the land between the existing highway boundary and the vision splays shown on drawing no 374 DO3A shall be cleared of all obstructions exceeding 1m in height, and so maintained thereafter;

14. details of a screen of 2ms in height for the northern boundary of the site and that part of the western boundary that abuts the service area shall be submitted to the local planning authority for approval; implemented before the use of the site is commenced; and thereafter retained;

15. details of a barrier along the southern and part eastern boundaries of the site shall be submitted to the local planning authority for approval; implemented before the use of the site is commenced; and thereafter retained;

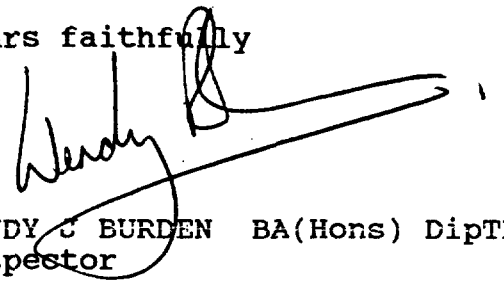
16. before the use is commenced, the footways fronting the site on Woolram Wygate and the distributor road shall be constructed in accordance with a scheme approved by the local planning authority.

14. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

15. The developer's attention is drawn to the enclosed note relating to the requirements of the Building Regulations 1991 with respect to access for disabled people.

16. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully



WENDY C BURDEN BA(Hons) DipTP MRTPI
Inspector

SOUTH HOLLAND DISTRICT COUNCIL

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE

Tel 01775 761161

Author:
HAPS

Scale:
1: 2500

Location:
South Holland

Date:
1998

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