
Appeal Decision

Inquiry held on 30 September to 3 October 2014

Site visit made on 21 October 2014

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 December 2014

Appeal Ref: APP/G5180/A/14/2217362

The Porcupine, 24 Mottingham Road, London SE9 4QW

- 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 Lidl UK against the decision of the Council of the London Borough of Bromley (LBB).
 - The application No:DC/13/04160/FULL1, dated 12 December 2013, was refused by notice dated 5 March 2014.
 - The development proposed is the "Redevelopment of the site including the demolition of all existing buildings and removal of all trees on site. Erection of a two storey building comprising a retail foodstore (800 m² sales area) to the ground floor and a warehouse to the first floor. A total of 35 car parking spaces will be provided."
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Decision

1. I dismiss the appeal.

Preliminary matters

2. LBB advised by email dated 1 August 2014 that its Plans Sub Committee agreed not to contest the appeal on its third reason for refusal, which concerned crime prevention. This was on the basis of revised drawings showing a proposed gate and other security measures agreed between the appellant and the Metropolitan Police's Design Out Crime Officer.
3. An error in the drawings and inconsistency with the submitted transport assessment concerning parking provision was not realised until the appeal stage.¹ The transport assessment and other evidence correctly identified provision for 35 parking spaces, but this was not correctly shown on the site layout plan. This also meant that some floor plans, the drawings in the Design and Access statement and the Arboricultural and Landscape Impact Assessment were incorrectly annotated.
4. An amended scheme was submitted at the appeal stage. This proposes the incorporation of the agreed crime prevention measures, including security gates across the access road, retractable bollards and a pedestrian walkway through the car park adjacent to the building. The proposed amendments at the appeal stage would also rectify the error in the depiction of the proposed parking provision. In addition, some other inconsequential alterations concerning the size and numbering of car parking spaces are proposed. I

¹ Inquiry Document 3.

consider that all these amendments at the appeal stage would be minor alterations that would not substantially alter the proposal. LBB has no objection to these alterations, and the application was determined on the basis of provision for 35 car parking spaces, albeit the drawings did not reflect this. I do not consider that determining the appeal on the basis of the amended scheme would be prejudicial to the interests of any other party. I have, therefore, as indicated at the Inquiry, determined the appeal on the basis of the amended scheme, as shown on the following revised drawings:

Proposed Site Plan: 4974 PL 02G

Proposed Floor Plan: 4974 PL 03E

Proposed Security & Surveillance Plan: 4974 SK100D.

5. The property is currently vacant and boarded up behind hoardings along the frontage to Mottingham Road. The Porcupine Inn closed down in March 2013.² The site was acquired by Lidl in the same month for £1.1 m, without being put on the open market.³ The Porcupine Inn was listed as an Asset of Community Value (ACV) on 11 July 2013. An oak tree and a hawthorn tree on the appeal site are the subject of a Tree Preservation Order (TPO), which was issued on 26 July 2013 and confirmed on 14 November 2013.⁴

Main issues

6. The main issues in this appeal are the effects of the proposed development on:
 - (a) The character and appearance of the area, having regard to the loss of protected trees.
 - (b) The living conditions of adjoining occupiers with particular reference to visual impact, noise and disturbance.
 - (c) The provision of community facilities.
 - (d) The vitality and viability of the local centre.
 - (e) Highway safety.

Planning policy

7. The development plan for the area includes The London Plan 2011 (TLP) and the London Borough of Bromley Unitary Development Plan, which was adopted in 2006 (UDP). Policy 2.15 of TLP provides that development in town centres should, amongst other things, sustain and enhance the vitality and viability of the centre. TLP Policy 4.8 supports convenience retail particularly in centres to secure a sustainable pattern of provision and strong, lifetime neighbourhoods.
8. The objectives of the UDP include sustaining and promoting the vitality and viability of town centres and ensuring that the range and level of facilities are appropriate to the role and function of each centre in the hierarchy. In the UDP's shopping hierarchy Mottingham is included as a local centre. The Porcupine Public House is included within the defined shopping frontage to which UDP Policy S4 applies. UDP Policy S6 states that proposals for retail development within local centres would be permitted provided that the scale would be appropriate and it would not harm the vitality and viability of other

² Statement of Common Ground (SoCG) dated 4 July 2014.

³ Mr Cuthbert's evidence.

⁴ SoCG.

nearby centres.

9. I have also taken into account the *National Planning Policy Framework* (hereinafter the *Framework*) and the *Planning Practice Guidance*. The provisions to which I was referred in the *Draft Further Alterations to the London Plan*, January 2014, and in LBB's *Local Plan Draft Policies and Designations Document*, February 2014, generally look to apply the national policy set out in the *Framework*. However, the stage they have reached limits the weight that can be given to these emerging plans in the determination of this appeal.

Reasons

Character and appearance

10. The 0.25 ha site is bounded by a motorcycle showroom to its north, and residential properties along and off Devonshire Road to its south and west. There are other commercial premises and community facilities nearby within Mottingham local centre. The appeal site lies close to the roundabout at the junction of Mottingham Road and West Park, which contains a war memorial. LBB takes no issue with the design of the proposed foodstore.⁵ I have no reason to find that it would not be an appropriate replacement building in terms of its effects on the street scene.
11. The appeal scheme would result in the development of the open and grassed area to the rear of the existing building, which in part has been used in the past as an outdoor garden for the public house. This change, from an open green space to a car park, loading area and part of a large building, would affect how the site was seen and perceived in its local context. This would, to some extent, have an adverse impact on the character and appearance of the area, albeit in the context of mixed residential/commercial development.
12. The scheme proposes the removal of both the protected trees, and the planting of 10 semi-mature and native trees, comprising 5 columnar hornbeams, 4 columnar hawthorn and 1 cypress oak, along with native and ornamental shrubs. UDP Policy NE7 requires particular account to be taken of existing trees which in the interests of visual amenity are considered desirable to be retained. It refers to the use of TPOs to protect trees of environmental importance and visual amenity, but also provides that when trees have to be felled that suitable replanting would be sought. LBB considers that the hawthorn is a category C tree, the appellant argues that it is category U, with serious irremediable defects. It was evident from my site inspection that the part of the tree close to the ground where its two main limbs divide is decaying, which could limit how long it could be retained, particularly as part of its limbs overhang the boundary fence of the adjoining residential property. Given its siting and height, this tree is not very prominent from public vantage points. Its removal would result in the loss of the amenity value it provides, which was considered sufficient to justify its inclusion in a TPO. However, the tree planting proposed in the appeal scheme closer to Mottingham Road would, over time, more than compensate for this loss of amenity value.

⁵ SoCG.

13. The semi-mature oak tree has some crowded branches at the junction with its main stem. It is located close to the boundary with the motorcycle showroom property, and it appears that the adjoining occupier has in the past removed limbs that overhang the boundary. This has not been done sensitively, which has damaged some branches, and given the tree a misshapen crown. Nonetheless, it is classified as a category C tree by the appellant, and as category B by LBB. The oak tree is visible from some vantage points along Mottingham Road and West Park. It is also seen between the houses on Devonshire Road. Notwithstanding its past treatment, it has the potential, with appropriate management, to grow into a larger and more attractive tree. Its branch configuration would mean that it would never be a perfect specimen, and any future cutting back of limbs overhanging the boundary would make it appear even more misshapen as it got larger. Nevertheless, it has the potential to make a significant contribution to the future amenity of the area, and this would be lost if the appeal scheme was built. The proposed tree planting along this boundary closer to the road would go some way to mitigating this harm, but these trees would not grow into the large-canopied trees favoured in TLP. However, they would be in keeping with the street trees on the opposite site of Mottingham Road.
14. Overall, I consider that the loss of the protected trees is a consideration which, at least to some degree, weighs against allowing the appeal. But this would not be sufficient to bring the proposal into significant conflict with UDP Policy NE7, or with TLP Policy 7.21, which seeks to retain existing trees of value, but also provides for replacement following the principle of 'right place, right tree'.
15. On the first main issue, the loss of protected trees and open space to the rear of the existing building would, to some extent, have an adverse effect on the character, appearance and amenity of the area. However, this would not be sufficient to bring the proposal into any conflict with the aims of TLP Policies 7.4 and 7.5 concerning high quality design and the public realm. Furthermore, any harm to the character and appearance of the area would not be sufficient to render the scheme contrary to the provisions of UDP Policy BE1 (i), (ii) or (iii) concerning attractive development, effects on the street scene and landscape features, and provision of landscaping. I do not consider that any harm to the character and appearance of the area resulting from the appeal scheme would weigh much against the proposal.

Living conditions

16. Local residents are concerned about noise and disturbance from the parking and service area, the visual impact of the scheme and its effects on privacy. LBB considers that a more troubling element of the cramped site would be vehicles parked and unloaded virtually underneath a bedroom window of 26 Devonshire Road.
17. The foodstore and its parking and servicing would change views of the appeal site from neighbouring properties. However, given the setback distances of the proposed building from residential properties, and taking into account that this is a designated local centre, where some development could be expected to take place, I do not consider that any harm to the outlook from nearby residential dwellings would be a consideration that would weigh against the proposal.⁶ Similarly, with appropriate boundary treatment, reasonable

⁶ Inquiry Document 4.6.

standards of privacy for this area could be maintained. However, I share some of the local concerns about possible noise and disturbance.

18. Noise from the loading and unloading of service vehicles might, at times, be generated, particularly if it involved pallets or crates. But this would take place in a partially enclosed space located some distance from the nearest dwellings. The manoeuvring of delivery vehicles might also result in some noise and disturbance to neighbours, but deliveries would be restricted to certain times and precluded before 0700 hours and after 2100 hours.⁷
19. People getting in and out of cars in the car park, moving shopping trolleys and loading car boots would also make some noise. This could be annoying at times for neighbouring residents, particularly the occupiers of the rooms in the elevation of No.26 that faces towards the appeal site. Windows in this elevation would be close to the proposed parking spaces in the north-western corner of the proposed development. However, I have taken into account that noise and disturbance at night time might result from activities in the rear garden of the public house up to closing time.⁸ There are reports of anti-social behaviour at times when the Porcupine Inn was operational. I accept that such activities and behaviour might not be a feature of all public houses. Nevertheless, it would be an advantage to those living nearby that the proposed retail use of the site would permit customers only to be admitted to the premises up to 2100 hours on Mondays to Saturdays and up to 1700 hours on Sundays.⁹
20. Appropriate landscaping and boundary treatment, including an acoustic fence, along with the proposed security measures and provision for an approved management scheme for the car park, would assist in minimising any adverse effects on the living conditions of neighbours by reason of noise and disturbance. I am satisfied, given that the site is located within a local centre, and the local context comprises a mixed residential/commercial area, that appropriate standards of amenity for this location could be achieved.
21. On the second main issue, I consider that the proposal would, to a limited extent, adversely impact on the living conditions of neighbouring residents. There would be some conflict with UDP Policy BE1 (v), which provides that development should ensure that the environments of the occupiers of neighbouring buildings are not harmed by noise and disturbance. The imposition of appropriate conditions could minimise such harm, and overall I do not consider that much weight should be given to the likelihood of the appeal scheme resulting in an unacceptable impact on the residential amenity of those living nearby.

Community facilities

22. UDP Policy C1 provides, amongst other things, that planning permission would not be granted for proposals that would lead to the loss of community facilities unless it can be demonstrated that there is no longer a need for them or alternative provision is to be made in an equally accessible location. The supporting text states that the policy is intended to protect existing community

⁷ Suggested Condition 17 Inquiry Document 14.

⁸ The former public house had a licence to sell alcohol up to 2300 hours on Mondays to Saturdays and 2230 hours on Sundays (SoCG).

⁹ Suggested Condition 25 Inquiry Document 14. The times cited above are agreed by the appellant and LBB, but there is a dispute about what hours should apply on public holidays.

facilities. It seems to me that this should properly be read to apply to public houses because paragraph 13.10 of the UDP records that land and buildings used by the community vary widely in nature and ownership. The fact that public houses are not cited in the following sentence, which provides that community facilities include places of worship, health and education facilities, scout buildings and church and community halls, is not a reason to exclude public houses, or to limit the application of the policy to uses generally falling within Use Class D1. This list is inclusive not exclusive. The way this policy has been applied in the past by LBB is a relevant consideration, but I do not consider that it should be determinative in this case, as I am required to interpret the policy, having regard to the meaning of the words in a planning context.

23. There is significant evidence that the Porcupine Inn has in the past been a useful and valued community facility. As an ACV the property is by definition considered to be of value to the community. The listing concerns ownership of the property, but it is also evidence that the ACV has furthered the social wellbeing or social interests of the community in the recent past, and that it is realistic to consider would do so during the next 5 years. The appeal scheme would result in the loss of this community facility.
24. Considerable evidence was adduced about the trading performance of the Porcupine Inn in the years leading up to its closure, and whether a public house would now be profitable, given the costs of bringing the building back into use, and likely competition from others operating in this business sector. However, given the number of factors which might potentially be involved, it is difficult to draw any decisive conclusions from this evidence about the need for, and future prospects of, a public house on this site. The best test of this would be whether someone was prepared to purchase the site on the basis of its current condition and lawful use. An open marketing exercise would enable all considerations, such as land acquisition costs, repairs and refurbishment costs, operating costs and profits, along with any development potential of the land to the rear of the existing building, to be factored into the assessment. Without providing such an opportunity for the market to have a say about the prospects of a public house on this site, I am not satisfied that the evidence before the Inquiry establishes whether such a use would be viable or not. The appellant marketed the property to a number of parties that it considered might be expected to show an interest in buying the freehold. However, I do not consider that the outcome of this exercise is evidence that an open marketing exercise has been undertaken which rules out any reopening of the public house. The evidence about viability and the commercial prospects of a public house use for the appeal site falls short of demonstrating that there is no longer a need for such a community facility.
25. I saw on unaccompanied site visits other public houses in the wider area, and other buildings and sites that are used for community purposes. Some of the former customers of the Porcupine Inn might find other public houses acceptable alternatives, but none of these are located in the local centre. I do not believe that these public houses can be considered alternative provision in an equally accessible location for the purposes of applying UDP Policy C1. The other community facilities in the area serve various functions, none of which would provide a comparable alternative to the Porcupine Inn.

26. The proposal would not accord with the aims of TLP Policies 3.16 and 4.6, concerning, respectively, the protection and enhancement of social infrastructure, and entertainment provision. The *Framework* includes public houses as community facilities. The proposal would be at odds with that part of the *Framework* which states that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. The *Framework* also provides that decisions should guard against the unnecessary loss of valued facilities, and I return to this later in this decision.
27. On the third main issue, the proposal would result in the loss of a valued community facility. This would conflict with UDP Policy C1, and would not accord with the aims of relevant TLP policies. This is a consideration which weighs against allowing the appeal.

Vitality and viability of the local centre

28. There is local concern about the effects of a convenience retail unit with a sales area of 800 m² adversely affecting the turnover of existing shops in the local centre. Existing convenience provision in Mottingham includes a Marks and Spencer Simply Food concession in the BP petrol station on the roundabout, a Nisa, a news agency, and an out-of-centre Co-op store. The appellant's view that the proposal would result in significant qualitative improvement to convenience shopping provision in Mottingham was not seriously challenged at the Inquiry. There is also evidence of an identified quantitative need for additional foodstore provision in Mottingham.¹⁰ The appeal scheme would widen local consumer choice and would encourage additional footfall in the centre. This would benefit other local shops and services.
29. The proposal would generate approximately 30 full and part time jobs, along with construction employment. Although the full time equivalent employment generation is not specified, it is likely that the proposed retail use would provide more employment than would a public house use of the site, and so this is also a factor that would be of some benefit to the local economy. Significant weight should be given to the economic growth that would result from the scheme.
30. The SoCG records that the proposal would be of an appropriate scale for the local centre and would not have an unacceptable retail impact on either the centre or any other designated centre, and so would accord with UDP Policy S6. I share this view. The proposed development would also accord with the aims of UDP Policy S4 concerning retail frontages. The supporting text to this policy states that the main function of local centres is to provide an adequate range of shops and services to meet the needs of local communities. The scheme would gain support from TLP Policy 2.15. It would also accord with TLP Policies 4.7 concerning the scale of retail development, and Policy 4.8 regarding support for convenience retail, particularly in local centres.
31. On the fourth main issue, the proposed retail use would benefit the local economy and would enhance the vitality and viability of Mottingham local centre. It would gain considerable support from UDP and TLP policies concerning retail development and town centres. This is a consideration which

¹⁰ The Bromley Retail, Office, Industry and Leisure Study identified capacity for an additional 1,500 m² net convenience floorspace in local centres such as Mottingham over the period up to 2016.

weighs significantly in favour of allowing the appeal.

Highway safety

32. Mottingham Road is part of the B226 and a busy London Distributor Road.¹¹ LBB is critical of the layout for the proposed service bay, but there would be scope within the site and layout to make minor revisions which would provide for delivery vehicles to negotiate the loading area. The scheme would provide rear-servicing facilities and so would comply with UDP Policy T17. The proposal would not conflict with UDP Policy T3, which sets maximum parking standards.¹² However, these were derived from the guidance in PPG13. The *Framework* now provides that local parking standards should take into account accessibility, type of development, public transport, local car ownership and the overall need to reduce the use of high-emission vehicles. I have, therefore, considered the evidence about the likely demand for parking, along with the accessibility of the site and existing parking provision within the local centre.¹³
33. Some of the proposed parking spaces would need to be coned off to permit delivery vehicles to gain access to the servicing area, and so might be unavailable to shoppers for considerable periods of time. The shopping trolley storage area would be located at the front of the building, at the north-eastern corner of the site, and a long way from parking spaces, behind the proposed building, in the north-western corner of the site. If customers decided to abandon shopping trolleys in car parking spaces rather than return them to the front storage area, this might also mean that some additional spaces were unavailable at times. Nevertheless, I have taken into account the existing parking provision within the local centre, the proximity of bus stops, along with the opportunity for combined trips to local facilities that the appeal scheme would provide. Taking all considerations into account, including the suggested planning condition concerning an approved scheme of management for the car park, I am satisfied that 35 parking spaces would be appropriate in the circumstances.¹⁴ I find no conflict with TLP Policy 6.13 which seeks an appropriate balance between promoting new development and preventing excessive car parking provision. However, I have concerns about the safety of those using some of the parking spaces located near to the proposed access onto Mottingham Road, which I return to later in this decision.
34. Large vehicles turning out of the proposed access towards the roundabout would occupy the full width of Mottingham Road. However, this is something which might also result from large vehicles servicing a public house use of the site, and so I do not consider that this is a significant factor that would weigh against the proposal. However, the proposed retail use, along with the increased parking provision on the site, would be likely to significantly increase the number of vehicles accessing the site, especially during the day time. Adequate visibility at the proposed junction would be an important consideration here. This is particularly so as vehicles approaching the roundabout from the south-east might be accelerating, down a slope, away from the junction and pedestrian crossing further to the south-east. Furthermore, at the point drivers would be likely to become aware of the

¹¹ Inquiry Document 4.21.

¹² Appendix II of the UDP sets a maximum of 40-60 spaces on the basis of a requirement for one space per 20-30 m² gross floor area, and a gross internal floorspace of 1,200 m² cited on the application form.

¹³ Including Inquiry Documents 4.14-19 and 4.23-29.

¹⁴ Condition 11 of Inquiry Document 14.

roundabout, where it is signed near to the junction with Devonshire Road, it seems to me, from driving this route, that their attention would be focussed more on what was happening at the roundabout than on vehicle movements onto and off the road along the approach to the roundabout.

35. *Manual for Streets* and *Manual for Streets 2* (MfS) set out recommended values for X and Y distances at junctions, and provide that the Y distance should be based on the recommended stopping sight distance (SSD) values. It also refers to research that indicates that a reduction in visibility below recommended levels will not necessarily lead to a significant problem. However, for the reasons set out above, I find no grounds here to justify any relaxation of the recommended Y distances. Table 7.1 of MfS provides for an SSD of 36 m at 28 mph, and 40 m at 30 mph, which is the speed restriction that applies here. This speed restriction would indicate, with an allowance for bonnet length, a recommended forward visibility stopping sight distance in advance of the proposed access of 43 m for vehicles travelling northbound on Mottingham Road.¹⁵ The proposed access would achieve a visibility splay of 2.4 m x 30 m right hand visibility splay to the channel line, and a 2.4 m x 36 m splay to a 1 m offset from the channel line.¹⁶ I have had regard to the traffic speed surveys at different times, locations and for different durations, but I am not convinced that these, taken overall, indicate that it would be appropriate here to use an 85th percentile speed of either 28 mph or 29 mph for the purpose of applying the guidance in MfS.¹⁷ I consider that a speed of 30 mph would be more representative and should be applied. Furthermore, having regard to the width of the carriageway, along with its use by motorcycles, I do not consider that it would be safe to rely on measurements taken 1 m in from the channel line. Given my findings on these matters, the proposed access would not accord with the recommendation in MfS.
36. The appellant also considered variations to the proposed access, which would increase the visibility splay to the south-east.¹⁸ These included two options; one with a widened bell mouth, and the other with increased kerb radii and over-running central island. However, in both cases it seems to me that pedestrians and drivers would be unclear about where, within the proposed junction, they should be moving safely through it, having regard to vehicles manoeuvring into and out of nearby parking spaces, and shoppers accessing and loading parked cars. In both these arrangements vehicles would inevitably have to traverse hatched areas or central islands. The parking spaces near to this access would be likely to be the most well used because of their proximity to the store entrance and trolley storage area. The proposed arrangement, with a mix of turning and manoeuvring vehicles from shoppers visiting the store, delivery vehicles servicing the foodstore, and pedestrians/cyclists on Mottingham Road, would be likely to lead to confusion and a significant safety risk. None of the alternative options presented to the Inquiry would, in my view, satisfactorily overcome the objection to the proposal on highway safety grounds.

¹⁵ Mr Budd's Proof of Evidence paragraph 4.38. The appellant considers that this is the starting point for the designer, which should be applied flexibly, and that non-adjusted SSD applied to lateral visibility.

¹⁶ Mr Budd's Appendix JRB12.

¹⁷ The SoCG records that having supplemented the original single day of speed readings with 4 days of ATC data, it is agreed that the 85th percentile speed northbound along Mottingham Road in the vicinity of the site access is 30 mph and that therefore the appropriate visibility standard is 40 m (SSD), 43 m adjusted for bonnet length. At the Inquiry the appellant relied upon more recent radar gun surveys which gave readings of less than 30 mph.

¹⁸ Options 2 and 3 would achieve a visibility of 40 m.

37. I do not consider that the access arrangements shown on Proposed Site Plan: 4974 PL 02G would be acceptable. Furthermore, it would not be reasonable to allow the appeal and to rely on the subsequent approval of the layout of the access road and turning area, along with junction details and dimensions of visibility splays, by means of discharging a planning condition.¹⁹ These are matters, which in the circumstances that apply here, would need to be determined as part of any permitted development proposal, particularly as devising an acceptable access might require revisions to the design and layout of the scheme.
38. I am not satisfied that the proposal has demonstrated that safe and suitable access to the site can be achieved for all people. In the absence of evidence to indicate otherwise, I find that residual cumulative transport impacts of the proposed development would be severe. The proposal would therefore conflict with the provisions in the *Framework* concerning highway safety.
39. On the fifth main issue, I find that the proposal would harm highway safety, and that this is a consideration which could not be overcome by the imposition of planning conditions. This would conflict with the aims of UDP Policy T18, which seeks to ensure that road safety is not adversely affected. The proposal would also be at odds with the aims of UDP Policies T6 and T7 which, amongst other things, seek improvements to the pedestrian environment, and concern the safety of cyclists. The risk to safety is a consideration which weighs heavily against allowing the appeal.

Other considerations

40. Subject to the imposition of appropriate planning conditions I consider that the proposed development would incorporate adequate security and crime prevention measures. I find no conflict with TLP Policy 7.3 concerning designing out crime, or UDP Policy BE1 (viii), which deals with security. I have taken into account all the other matters raised in the evidence, including the various appeal and other decisions concerning the loss of public houses. I do not consider these to be very helpful in determining this appeal on its own merits because much would depend in each case on the particular circumstances which applied. Neither these, nor any of the other matters raised, are sufficient to outweigh my conclusions on the main issues, which have led to my decision on this appeal.

Conclusions

41. The appeal scheme would, to some extent, have an adverse effect on the character and appearance of the area, and would also, to a limited degree, impair the residential amenity of those living nearby. However, the extent of this harm would not weigh heavily against the proposal. The loss of the public house as a valued community facility is a weighty consideration against allowing the appeal. But the proposal would replace a public house with a local shop, and both are considered to be community facilities in the *Framework*. The overall contribution the scheme would make to the vitality and viability of Mottingham local centre is, therefore, an important consideration. In my judgement, the benefits to the local centre and to the local economy would go a substantial way to outweighing not only the resultant harm to the character and appearance of the area, and to the living conditions of nearby residents,

¹⁹ As was suggested at the Inquiry in Condition 7 of Inquiry Document 14.

but also the harm that would result from the loss of an ACV. However, what tips the balance against the proposal in this case is the harm I have identified to highway safety. The access arrangement would pose a significant risk to those using this busy part of the highway network, and some of the parking proposed would put at unacceptable risk those most vulnerable, such as pedestrians and cyclists. Taking all these considerations into account, I find that the planning balance here falls against allowing the appeal.

42. Considerable time was taken at the Inquiry in hearing evidence about the viability of a public house on this site, the costs of bringing the building back into use, and the likelihood of this being achieved. I have found, for the reasons set out above, that the marketing exercise undertaken does not rule out reopening of the public house. Even if I am wrong about this, I do not consider that the viability of a public house use would be a consideration that would outweigh the harm to highway safety that I have identified, or would, by itself, in any other way justify allowing the appeal. However, chief amongst the other considerations that apply in this case is the fall-back position, which I turn to next.
43. A fall-back scheme would be use of the existing building for retail purposes, without the need to obtain planning permission, by utilising permitted development rights. There is sufficient evidence to indicate, in the event that the appeal was dismissed, that there is a realistic prospect of such an outcome. The appellant, in answer to my question, considers that the appeal scheme, taking into account all factors, would be no more or less harmful than the fall-back scheme. This must mean, in the appellant's view, that the appeal scheme would have the same, or a comparable, overall impact to that of the fall-back scheme. I disagree for the reasons set out below, but first set out how consideration should properly be given to the fall-back argument in this case.
44. For the fall-back position to amount to a consideration that would weigh in favour of allowing the appeal it would be necessary to conclude that, on balance, the harm from the fall-back scheme would be worse than, or at least comparable to, that which would be likely to result from the appeal scheme. So that if the appeal were to be dismissed there would be a reasonable prospect of the same outcome in terms of harm, or a less desirable outcome than the appeal proposal, and that this would then become a relevant factor to be weighed in the planning balance in favour of permitting the appeal scheme.
45. In this case the protected trees would remain in the fall-back scheme, but this outcome would not benefit from the new tree planting in more prominent locations that is proposed in the appeal scheme. The existing building would be retained and the street scene preserved in the fall-back scheme, but there are no architectural or streetscape reasons to indicate that this should be preferred to the replacement building proposed. However, the proposed rear parking and service area would introduce more activity, hard landscaping, and a more urban and developed feel to the rear of the appeal site. Overall, the fall-back scheme would have a less harmful effect on the character and appearance of the area than would the appeal scheme. A similar finding would also apply to the likely effects on the living conditions of neighbouring residents, with any noise and disturbance at times from the rear parking and servicing area of the appeal scheme unlikely to be a feature of the fall-back scheme.

46. The community use of the building as a public house would be lost in both schemes, but it would be replaced by a local retail use, which is defined as another community use. I find that there would be little difference between the outcomes in terms of the likely effects on community facilities, or on the vitality and viability of the local centre. There would, however, be a difference in terms of traffic generation and highway safety. The substantially larger retail unit proposed in the appeal scheme, along with 35 car parking spaces compared to the number of existing spaces, would be likely in my judgement to result in considerably greater traffic generation than would be likely from the fall-back scheme.²⁰ The existing arrangements are not ideal, some car parking spaces are substandard, entering the northern access would raise safety considerations, and the visibility of both access points is restricted to some degree.²¹ However, the accident record does not provide any evidence of a significant safety problem at the traffic levels generated by the Porcupine Inn. Even allowing for the inadequacies of the existing parking and access arrangements to the premises, along with possible servicing difficulties and overspill parking at times, I consider that the appeal scheme would result in more harm to the safety of those using the local road network than would be likely to result from a retail use of the existing building. Taking all these considerations into account, I find that the fall-back scheme would be likely to result in less overall harm than would the appeal scheme, and so the fall-back position is not a consideration that weighs in favour of allowing the appeal.
47. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. The appeal scheme gains some support from UDP Policies S4 and S6, TLP Policy 2.15 and other development plan policies concerning retail development and town centres. However, with respect to community facilities it would conflict with UDP Policy C1 and would be at odds with the aims of TLP Policies 3.16 and 4.6. On highway matters, it would conflict with UDP Policy T18, and would not accord with the aims of UDP Policies T6 and T7. There would also be some conflict with UDP Policy BE1 (v). Overall, I find that the proposal would conflict with the development plan, when taken as a whole.
48. It would also conflict with the provisions of the *Framework*, which advises that to deliver the social, recreational and cultural facilities and services that the community needs, planning decisions should guard against the unnecessary loss of valued facilities and services. The evidence before me does not indicate that the loss of the community facility would be necessary. I conclude, having regard to the policies in paragraphs 18 to 219, taken as a whole, that the proposal would not accord with the requirements for sustainable development set out in the *Framework*. There are no material considerations here that would indicate that a determination other than in accordance with the development plan was justified. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Woolcock
Inspector

²⁰ The SoCG states that the existing car park has space for approximately 19 cars, but Mr Budd's proof of evidence at paragraph 8.7 states that the former Porcupine Inn provides space for 17 cars.

²¹ Inquiry Document 4.22.

- 4.4 Revised site layout plan, Drawing No.PL-02 Rev G.
 - 4.5 Crime prevention measures, Drawing No.SK100 Rev D.
 - 4.6 Building distances plan.
 - 4.7 PM peak total trip assignment.
 - 4.8 Saturday peak total trip assignment.
 - 4.9 K&M speed survey raw data.
 - 4.10 29th August 2014 speed survey data, calculation of 85thile wet-weather speed.
 - 4.11 1 September 2014 speed survey data, calculation of 85thile wet-weather speed.
 - 4.12 Visibility confirmation following site visit of 22 July 2014, Drawing No.SCP/13225/SK08.
 - 4.13 Forward visibility measurements based on JRB15 (Access Option 3).
 - 4.14 Parking accumulation Lidl Rockferry.
 - 4.15 Parking accumulation Lidl Gwersylit.
 - 4.16 Parking accumulation Lidl Ipswich.
 - 4.17 Parking accumulation Lidl Norwich.
 - 4.18 Parking accumulation Lidl March.
 - 4.19 Lidl London store details.
 - 4.20 HGV swept paths showing clearances and detailed cab dimensions, Drawing No.SCP/13225/Appendix 7.
 - 4.21 Mottingham Road as a London Distributor Road in context.
 - 4.22 Appraisal of PH car park – visibility splays and other observations.
 - 4.23 Saturday parking demand by gross internal area.
 - 4.24 Saturday parking demand by sales area.
 - 4.25 Friday parking demand by gross internal area.
 - 4.26 Friday parking demand by sales area.
 - 4.27 Warlingham TA cover sheet and development proposals page.
 - 4.28 Saturday parking demand by sales area – London stores only (with/without Brixton).
 - 4.29 Weekday parking demand by sales area – London stores only (with/without Brixton).
 - 4.30 Mr Cuthbert’s Inquiry Note
 - 4.31 Appendix to Mr Cuthbert’s Inquiry Note comprising updated Stace Cost Appraisal.
 - 4.32 RICS Guidance Document on Capital and Rental Valuations of Public Houses.
- Document 5 Applications to vary premises licence and Premises Licence 10/00651/MPRE.
- Document 6 Emails dated 11 July and 15 July 2014 between LBB and Morgan & Clarke concerning potential for redevelopment of the rear of the site for 4 or 5 residential properties.
- Document 7 Extract from Manual for Streets.
- Document 8 Appendix V Shopping Frontages Adopted UDP.
- Document 9 Extract from *Investments* Fleurets.
- Document 10 Statement by Cllr David Cartwright.
- Document 11 Statement Emily Bailey.
- Document 12 Closing submissions on behalf of the local planning authority.
- Document 13 Closing submissions on behalf of Lidl UK GmbH.
- Document 14 Revised Agreed Planning Conditions.

PLANS

Existing Site Plan: 4974 PL 01
Topographical Survey: 13460/T/01-01
Proposed Site Plan: 4974 PL 02G
Proposed Floor Plan: 4974 PL 03E
Proposed Elevations: 4974 PL 04A
Proposed Elevation and Section: 4974 PL 05A
Proposed Elevations (coloured): 2 unnumbered sheets)
Proposed Security & Surveillance Plan: 4974 SK100D