



Appeal Decision

Inquiry opened on 4 December 2007

Site visit made on 5 December 2007

by **P J Asquith** MA (Hons) MA MRTPI

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

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Decision date:
11 January 2008

Appeal Ref: APP/M4510/A/06/2031640

Kingston Park Shopping Centre, Newcastle-upon-Tyne, NE3 2FP

- 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 Newcastle Property Developments (one) Ltd and Newcastle Property Developments (two) Ltd against the decision of Newcastle-upon-Tyne City Council.
- The application Ref. 2006/0558/01/DET, dated 22 December 2005, was refused by notice dated 26 May 2006.
- The development proposed is the partial redevelopment and improvement to the Kingston Park Shopping Centre to provide 8 new Class A1 shop units.

Summary of Decision: The appeal is allowed and planning permission granted subject to the conditions set out in the Formal Decision below.

Procedural Matters

1. At the Inquiry an application for a partial award of costs was made by Newcastle Property Developments (one) Ltd and Newcastle Property Developments (two) Ltd against Newcastle-upon-Tyne City Council. This application is the subject of a separate Decision.
2. As agreed in the Statement of Common Ground, in addition to the eight shop units, four office units at first floor level are proposed as part of the scheme and, for the avoidance of doubt, it is on this basis that I have considered this appeal. In this regard I consider that it is therefore more accurate to describe the proposed development as the partial redevelopment and improvement to the Kingston Park Shopping Centre to provide eight new Class A1 shop units and four office units.
3. Within the context of the appeal the appellants requested that four plans be substituted for those which formed part of the application. These relate to minor alterations to the internal car parking and access arrangements, improvements at the Brunton Lane/Kingston Park Avenue junction and removal of a small amenity area. The Council indicated that it had no objection to the substitution of these plans. Whilst these plans did not form part of the application, in my view the modifications shown are such that no prejudice to any party would arise from my consideration of them as part of the appeal process and accordingly this is what I have done.
4. Following the lodging of the appeal a request was also made by the appellants to amend the description of the development so that the proposed four new ground floor units to the side of the Springs Health Club could be used by operations falling within Classes A1 to A5 of the Town and Country Planning

Use Classes Order 1987 (as amended). The Council was not agreeable to this modification and I have not determined the appeal on the basis of any such modification.

Main issues

5. From all I have seen, read and heard I consider the main issues in this case to be: first, the effect of the proposals on the character, appearance and function of the Kingston Park Shopping Centre; and second, the scheme's impact on highway safety, traffic flow and residential amenity.

Reasons

First issue – character, appearance and function of the Kingston Park Shopping Centre

6. Together with the Tesco Extra store and its associated car park to the eastern side of Brunton Lane, the Kingston Park Shopping Centre forms the Kingston Park District Centre, one of six such principal shopping centres within the Newcastle metropolitan area. The proposals envisage the demolition of an existing parade of nine retail units, and their replacement with four larger units. Additionally, there would be a two-storey new build element providing four smaller retail units at ground floor level with office accommodation over. There would be a re-ordering of the existing car parking and circulation arrangements, with improvements in the connectivity between the main parking area and what is now an overspill parking area. Also, there would be improvements to Kingston Park Avenue, which provides access to this part of the shopping centre, and to the Kingston Park Avenue/Brunton Lane/Belvedere Parkway roundabout (the 'Tesco roundabout') to increase capacity, lane utilisation and safety for both car users and pedestrians.
7. The Council's decision notice alleged in the first reason for refusal an erosion of the character of the District Centre, the loss of small retail units and a harming of the vitality and viability within the centre. However, this reason was not contested by the Council at the Inquiry. This was in light of the appellants' contention, supported by a recently granted Lawful Development Certificate, that if the appeal was to fail it would be likely that the existing smaller retail units would be amalgamated into fewer larger units anyway.
8. The proposal is to effectively modernise the parade of older retail units, several of which are currently unoccupied, permission having originally been granted in 1979. It would bring them up to the same standard as the other units on the eastern part of the Kingston Park Shopping Centre that were constructed in 2001 and which currently house national retailers such as Next and Boots. The modern design would visually reflect and tie the redeveloped units to this more-recently constructed part of the centre. The addition of new units to the south-western part of the centre would provide continuing availability of smaller retail outlets. Their presence, and the re-ordering of the access/egress arrangements, would be likely to make better use of the overspill car park, which is currently visually unappealing and is accepted as currently under-utilised. I consider that the scheme would be likely to provide an enhancement to this part of the shopping centre, reinvigorating its somewhat tired and dated appearance and character, and strengthening its functioning and attraction as a primary shopping area of the defined District Centre. Having regard to its

scale, layout, appearance and likely diversity of use, the scheme would not be objectionable. In my view, the proposals would accord with the thrust of advice within Planning Policy Statement 6, (PPS 6) *Planning for Town Centres*. Furthermore, they would accord also with saved Policies R1.1 and R1 of the Newcastle upon Tyne Unitary Development Plan (UDP), which seek to maintain and enhance such shopping centres. I also consider there would be no conflict with UDP saved Policies EN1 and EN1.1, which broadly require developments to be of a high standard of design.

Second issue - Highway safety, traffic flow and residential amenity

9. The Council's second reason for refusal alleges that the proposals would be detrimental to road safety. However, at the Inquiry the Council's highways witness accepted that his evidence should not be taken as supportive of any contention that the proposals should be dismissed on any grounds of impact on road safety.
10. In terms of alleged impact on residential amenity the Council's case advanced at the Inquiry was not on the basis of noise, disturbance or pollution that might arise from the proposals. Rather, it was on the basis of the impact of additional traffic that would result from the proposed scheme creating difficulties for local residents accessing the highway network at certain times of the day; this would be caused by the addition to queuing traffic at certain junctions within the highway network. The Council maintains that more traffic would result from the additional trips generated by the re-invigorated retail centre. This would include vehicle movement resulting from an inability to find car parking space within the area served by Kingston Park Avenue, thereby causing vehicles to re-enter the highway network in search for spaces elsewhere. These issues are addressed in turn.
11. The Council commissioned a transportation study at Kingston Park in 2004, part of which included the use of a VISSIM micro-simulation model to assess the existing and proposed highway network operation within the area. It is apparent from the scoping study drawn up in advance of the preparation of a Transport Assessment for the appeal proposals that it was intended that they be assessed and audited against the VISSIM model. This would demonstrate the impact of the predicted increase in traffic on the local highway network. There is no dispute between the Council and the appellants in terms of input data in respect of the assessment of the proposals, including 2004 base flows, growth factors to achieve base flows in 2007, the level of traffic likely to be generated by the proposed development and its distribution on the highway network. The Council's conclusions flowing from the application of the VISSIM model are that the existing highway network within the Kingston Park area is heavily congested, with queues blocking back into other junctions along Brunton Lane. Its concern is that additional traffic from the appeal proposals would detrimentally affect this constrained network.
12. As agreed between the Council and the appellants, the proposal has been assessed at the weekday afternoon peak hour of 16.30-17.30 for an opening year of 2007 and five-year design horizon of 2012. The predicted additional trips within this peak period associated with what would be an increased floor area of 1,843 m², (an almost 20% increase), is some 37 arrivals and 40 departures.

13. The appellants consider these predicted increases need to be compared with the additional 25 additional one-way vehicle movements in the afternoon peak hour that might be generated with the implementation of extant planning permissions, which would provide for an alternative increase in floor area at the Kingston Park Shopping Centre of 1,148 m². In this latter regard I consider that, whilst there may be an increase in gross floor area associated with the extant permissions, it is unclear whether there would be an actual increase in net retail floorspace which could have the effect of increasing vehicle generation. Be that as it may, whichever figures are used they have to be seen within the context of measured and predicted 2007 two-way peak hour flows on Brunton Lane north of the Tesco roundabout ranging from some 1246-1269 vehicles and on Brunton Lane south of this roundabout of some 1456-1656, (the range depending on whether the appellants' June 2007 survey results are adopted or those predicted by VISSIM).
14. The predicted increase in link flows as a result of the proposed development compared to 2004 base flows is, with the exception of Kingston Park Avenue, less than 3%. The increase is less than the VISSIM model variation in flows. Recommended link flow calibrations relate to a tolerance of + or – 15%. The 3% predicted increase in traffic as a result of the proposals is well within this. It is also significantly less than the growth in traffic that was predicted for the period 2004 – 2007. The increase is also well within the generally accepted day-to-day variation of traffic flow which may be in the region of +/- 10%. The reliance that can be placed upon VISSIM as a predictive tool in such circumstances is to my mind somewhat undermined. Further doubts as to the predictive capabilities of VISSIM, when dealing with very small increases in flows on a network, stem from what appear to be somewhat anomalous outputs in certain instances where little or no alteration in absolute vehicle numbers appears to have a dramatic effect upon queue lengths.
15. Having regard to congestion, the Council's concerns appear to centre round the impact on the Tesco roundabout and on Brunton Lane, which splits the Kingston Park Shopping Centre and provides access to the adjoining retail warehouse parks of Belvedere Retail Park and Kingston Retail Park. Only at the time of the Inquiry does the Council's concern seem to have broadened to take in more remote road junctions within the Kingston Park area and which were not within the scope of the original Transport Assessment. Brunton Lane is claimed to be operating over capacity during peak periods, resulting in queuing. However, in support of this contention reliance is placed on peak flows within the agreed peak hour of the week. By contrast, average flows are much lower, as are average queue lengths, which the Council accepted at the Inquiry, were at least as important to consider as peak queues.
16. Even looking at the VISSIM maximum queue length predictions in the peak hour, comparing the development including the proposed mitigation measures at the Tesco roundabout with the 2007 base results, shows virtually no changes for several arms and sections on and off Brunton Lane and a maximum increase of about 16 metres on other sections. Given the caution that should be exercised about the predictive capabilities of VISSIM when dealing with small absolute additional numbers of vehicles as outlined above, I consider these increases would not be material. In my view if there is unlikely to be any material impact on roads closest to the development it is equally the case, if

not more so, that impact on roads and junctions further removed (such as Ponteland Road/Brunton Lane to the south and Brunton Lane/Kingston Park Road to the north) would be also insignificant; the effect of any additional traffic arising from the proposed development is likely to be partially dissipated before it reaches these.

17. Concern has been expressed about the danger of queuing back along Brunton Lane and over the barrier-free Metro level crossing. Queuing along this road back to the level crossing, which is only some 150 metres from the Tesco roundabout, already occurs. The Council considers that more sustained queuing would be unsatisfactory and that the Metro operator is justified in raising objections. The proposals may account for an increase of about one vehicle every four minutes approaching the level crossing in each direction. This would be within the daily variation of traffic flow. In my view such a level of increase would not be likely to materially impact on the safe operation of the level crossing, whose lights are said to operate for one minute for the passage of each train. Any increase as a result of the proposals would therefore equate to less than one additional vehicle being held at the lights.
18. The Council has expressed concern that there may be an under-provision of parking within that section of the Kingston Park Shopping Centre to the west of Brunton Lane. There are around 300 spaces currently within this part of the centre and a similar number would remain with the proposed scheme. As part of the Transport Assessment accompanying the appeal application a car parking accumulation assessment indicated a requirement for 334 spaces. However, subsequent car parking surveys indicated a maximum occupancy of 76% and 84% on a Friday and Saturday respectively, with under-utilisation of the overspill parking area in the south-west of the site. No substantive evidence has been produced that parking currently associated with the shopping centre takes place in nearby residential streets to the detriment of living conditions of occupiers there.
19. With the additional proposed gross floor space, and assuming normal peak trading periods, the appellants consider there would be an operational requirement for some 249 spaces. There is no indication of the level of retail occupancy when the car parking surveys were carried out and therefore the results might not reflect what might be expected under full trading conditions. Nevertheless, PPG 13 *Transport* indicates that developers should not be required to provide more parking than they consider appropriate other than in exceptional circumstances. No such exceptional circumstances have been advanced in this case in respect of a shopping centre which is very well served by public transport (bus and Metro). Indeed, the re-ordering of the circulation and parking arrangements would be likely to make more efficient use of what provision exists.
20. Furthermore, it is proposed (and can be ensured through an appropriate condition) that a variable message sign system be installed which would inform drivers approaching the Tesco roundabout junction of the availability of parking spaces within this part of the Kingston Park Shopping Centre. Particularly in times of peak trading this would assist in preventing additional manoeuvring within the highway network caused by drivers searching for parking space. It would help to directly divert any overspill parking at times of peak demand to what is an under-used part of the Tesco car park – also part of the Kingston

Park Shopping Centre – which is closest to the western part of the Centre and which benefits from pedestrian crossing linkage across Brunton Lane. In addition, a condition has been suggested, in the event of permission being granted, requiring the provision and implementation of Travel Plans, which could be beneficial in reducing car-borne journeys by employees of units within the site.

Conclusions on highway matters

21. Overall, it is clear that congestion occurs at times within the road network close to the appeal site and that this is perceived as problematic by the Council, a view shared by certain residents within the area who have attended local meetings and who have objected to the present proposals. Notwithstanding these concerns, I do not consider that it has been robustly demonstrated that the proposals would have any adverse impact in respect of materially exacerbating this congestion or inconvenience to the travelling public, either within the immediate vicinity of the Kingston Park Shopping Centre or on the broader network near to Kingston Park. I consider that the likely increase in traffic associated with the proposals would, in the context of the traffic situation which exists, be imperceptible to local residents. The proposals would have no material impact on residential amenity as a result of greater inconvenience and reduction in access or safety, or increases in noise or general disturbance.
22. For these reasons I do not consider the proposals to be contrary to saved UDP Policies T4.5, requiring development to provide parking which satisfies operational requirements; T7.1, requiring development to not result in traffic generation which would cause demonstrable danger or inconvenience; or H2, that seeks to prevent development which would result in harmful impacts for residents as a result of additional accesses, traffic or parking.

Conditions

23. I have considered the necessity for the imposition of conditions in light of the discussion that took place within the Inquiry when there was a large measure of agreement between the parties as to those conditions that would be required if permission was to be granted. In the interests of appearance and general amenity, I shall impose conditions requiring agreement of external materials, car park retaining walls, hard and soft landscaping, and lighting. To ensure highway safety and the provision of sufficient parking, a condition is necessary requiring the provision of car parking areas as shown on the approved plans prior to the occupation of the proposed retail and office units. Also, in respect of highway and pedestrian safety, conditions are required relating to the approval of servicing arrangements for the proposed units and the implementation of improvements to the Kingston Park Avenue/Brunton Lane junction. To assist in promoting alternative means of travel to the car I shall impose conditions relating to cycle parking provision and the need for agreement of Travel Plans.
24. In the interests of residential amenity, conditions are required to control external plant, hours and methods of construction work, storage and disposal of refuse, opening hours and times of deliveries. To ensure the vitality and vibrancy of the shopping centre by retaining a mix of retail uses and size of

units, I shall impose conditions restricting the Use Classes of the proposed smaller units and their amalgamation. I do not consider the suggested condition relating to the need for agreement of access arrangements for the disabled to be necessary as this is covered by other legislation.

Overall conclusion

25. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

26. I allow the appeal, and grant planning permission for the partial redevelopment and improvement to the Kingston Park Shopping Centre to provide eight new Class A1 shop units and four office units at Kingston Park Shopping Centre, Newcastle-upon-Tyne, NE3 2FP in accordance with the terms of the application, Ref. 2006/0558/01/DET, dated 22 December 2005, and the plans set out in the Annex below, subject to the following conditions:

1. The development hereby permitted shall begin before the expiration of three years from the date of this decision.
2. No development shall take place until sample materials to be used in the construction of the external surfaces, together with samples of the proposed canopies and the stanchions of the buildings hereby permitted, have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved materials.
3. The development hereby permitted shall not be occupied until the car parking area indicated on the approved plans or otherwise agreed in writing by the local planning authority, including disabled parking spaces contained therein, has been surfaced, sealed and marked out in parking bays.
4. Before the development hereby permitted is occupied a scheme for the provision of cycle parking shall be submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use and shall thereafter be retained.
5. The development hereby permitted shall not be brought into use until details of the proposed external lighting of the buildings, car parking and service areas have been submitted to and approved in writing by the local planning authority and implemented in accordance with the approved details.
6. Notwithstanding the approved drawings no development hereby permitted shall commence until details of the retaining walls within the car park marked as existing overspill car park on Drawing No. 03053 (--) 20B have been submitted to and approved in writing by the local planning authority. Thereafter the buildings shall not be occupied until the retaining walls have been constructed in accordance with the approved details.
7. Development shall not commence until details of any external plant, including extract ventilation facilities, air conditioning equipment and their

- noise generation levels and any noise attenuation measures have been submitted to and approved in writing by the local planning authority. Thereafter, these works shall be carried out in accordance with the approved details.
8. Before construction commences a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Plan shall be thereafter implemented as approved. The Construction Management Plan shall provide that no construction works, including any demolition and any delivery of equipment or materials, shall be carried out outside the hours of 08:00 to 18:00 Mondays – Fridays; 08:00 to 13:00 on Saturdays; and no work shall be carried out on Sundays or Public Holidays.
 9. No part of the development hereby approved shall be occupied until facilities for the storage and disposal of refuse, including walls, fences or other means of enclosure, have been installed in accordance with details that have first been submitted to and approved in writing by the local planning authority. The approved facilities shall be permanently retained thereafter.
 10. No development shall take place until full details of both hard and soft landscape works, including the number, species, height and position of trees, a programme of planting and details of post-planting maintenance, have been submitted to and approved in writing by the local planning authority. These works shall be carried out as approved. If within a period of five years from the date of planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
 11. No unit hereby permitted shall be occupied until details of a Travel Plan in respect of that unit has been submitted to and approved in writing by the local planning authority. The provisions of the approved Travel Plan for each unit shall be maintained in operation at all times unless otherwise agreed in writing by the local planning authority.
 12. Units 1 - 4 hereby permitted shall not be open to customers outside the following hours: 08:00 to 21:00 Mondays to Saturdays and 10:00 to 17:00 on Sundays, or as otherwise agreed in writing by the local planning authority. Units 5 – 8 shall not be open to customers outside the hours 08:00 to 22:00 Mondays to Sundays.
 13. No deliveries shall be taken at or dispatched from the site outside the hours 07:00 to 18:00 Mondays to Saturdays or at any time on Sundays or Public Holidays.
 14. The units hereby permitted at ground floor level shall be used for no other purpose than those within Class A1, whereas units 9 - 12 inclusive shown on drawing No. 03053 (2-) 21A shall be used for no other purpose than those in Class A1, A2 or B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended, or in any provision equivalent to those Classes in any statutory instrument revoking and re-enacting that Order with or without modification.

15. Notwithstanding the approved drawings development shall not commence until details of improvements to the Kingston Park Avenue/Brunton Lane junction, including car park signage, have been submitted to and approved in writing by the local planning authority. Prior to the first occupation of the development hereby approved the improvements shall be implemented in accordance with the approved details and shall be retained thereafter.
16. Notwithstanding the approved drawings no development shall commence until details showing the servicing arrangements, including tracking plots, for the units 5 - 12 shown on drawing No. 03053 (--) 20B have been submitted to and approved in writing by the local planning authority. The servicing arrangements shall be implemented and retained in accordance with the approved details.
17. None of the units 5 – 8 inclusive shown on drawing No. 03053 (--) 20B shall be amalgamated.

Annex

Agreed list of drawings relating to the proposals.

03053 (--) 01A Location plan.
03053 (--) 02 Existing site plan.
03053 (--) 03 Existing east and west elevations.
03053 (--) 04 Existing rear elevation – north.
03053 (--) 05 Existing rear elevation – west.
03053 (2-) 02A Proposed south elevation.
03053 (2-) 03B Proposed east and west elevations.
03053 (2-) 04B Proposed rear elevations.
03053 (2-) 05B Proposed rear elevation – west.
03053 (2-) 06A Proposed small units elevations.
161:17 Setting out coordinates (units as existing).
400:02 Existing floor plans Units 7 & 8
105 Rev VV Existing floor plans, Spring Health Club and Netto.
03053 (2-) 21A Proposed first floor plan.
03053 (2-) 20A Proposed ground floor plan.
03053 (--) 20B Proposed site plan.
03053 (9-) 03A Bin store.

P J Asquith

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ian Ponter, of Counsel	Instructed by Valerie Dodds, Head of Legal Services, Newcastle City Council.
He called	
Mr Simon Pratt BSc MIHT MICE	Associate Director, Faber Maunsell, Fifth Floor, 2 City Walk, Leeds, LS11 9AR.

FOR THE APPELLANT:

Mr Paul G Tucker, of Counsel	Instructed by Trevor Adey, Associate of Savills Commercial Limited.
He called	
Mr Jeremy Hinds BA (Hons) MSc MRTPI	Head of Retail Planning, Savills, Fountain Court, 68 Fountain Street, Manchester, M2 2FE.
Mr Graham Dawkins BSc (Hons) CEng MICE MIHT	Director, MJM Consulting Engineers Limited, Southgate House, 38 Southgate, Wakefield, WF1 1TL

INTERESTED PERSONS:

Ms Jennifer Du Cane	of 14 Ebchester Court, Kingston Park, Newcastle-upon-Tyne, NE3 2QX.
Cllr Anita Lower	Newcastle City Councillor (Castle Ward), of 27 Oulton Close, Meadow Rise, Newcastle-upon-Tyne, NE5 4SX.

DOCUMENTS PRODUCED AT THE INQUIRY

- 1 Attendance lists (2 days)
- 2 Letter on notification of the Inquiry, copy of newspaper advertisement and list of persons notified.
- 3 Rebuttal proof, Mr Graham Dawkins.
- 4 Nodes 1-9 traffic data (Council).
- 5 Traffic data, Tables A-G with amended Table G (Appellants).
- 6 Note of progress on matters agreed between the Council and the Appellants outside the Inquiry.
- 7 Copy of the Secretary of State's Schedule 8 Direction and schedule of saved policies of the Newcastle upon Tyne Unitary Development Plan (1998).
- 8 Statement of Common Ground.
- 9 Large scale Figure 3 from the Council's rebuttal evidence.
- 10 Appendices to the Transport Assessment 2006.
- 11 Extract from the Kingston Park Transportation Study, micro-simulation report, November 2004.
- 12 Scoping Study for the Transport Assessment, Revision A, July 2005.
- 13 List of suggested conditions.
- 14 Suggested substitute condition regarding a Construction

- Management Plan.
- 15 Plan ref 03053 (--) 25 showing the differences between drawing Nos. (--) 06B and (--) 20B.
 - 16 Note regarding the wording of car park sign restricting waiting at the Tesco car park.
 - 17 Letter from Ms Du Cane.
 - 18 Details of what a Travel Plan might contain.
 - 19 Council's closing submissions.
 - 20 Appellants' closing submissions.
 - 21 Bundle of missing application drawings.
 - 22 Schedule of drawings.