

27 October 2017  
L171027 - Pirelli Comments



Jeff Upton  
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Belvedere  
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Dear Mr Upton

**PLANNING APPLICATION REFERENCE P/2017/00141**

**APPLICATION AT THE LAND ADJACENT TO THE PIRELLI FACTORY, DERBY ROAD, STRETTON BURTON UPON TRENT**

**APPLICATION FOR THE ERECTION OF FOUR DETACHED BUILDINGS TO FORM FOODSTORE (CLASS A1), DRIVE THROUGH COFFEE SHOP/RESTAURANT (CLASS A1 / A3 / A5), RETAIL AND SERVICE UNITS (FOUR UNITS WITHIN CLASS A1 / A3 / A5 ON THE GROUND FLOOR) AND LEISURE UNIT AS A GYMNASIUM ON THE FIRST FLOOR (CLASS D2), BUILDERS MERCHANTS WITH OUTSIDE STORAGE - UNITS 5/6/7 (SUI GENERIS), EXTENSION OF TWO EXISTING BUILDINGS TO FORM FIVE EMPLOYMENT UNITS - UNITS 3/4/8/9/10 (CLASS B1C, B2 AND B8) INCLUDING ASSOCIATED ACCESS, CAR PARKING, BALANCING POND AND LANDSCAPING**

**Introduction**

Thank you for your e-mail and for confirming that our e-mails of 19<sup>th</sup> October, 23<sup>rd</sup> October and 25<sup>th</sup> October will be taken into account in the determination of the above application.

We refer to our discussion yesterday and understand that Officers have not written its report to Committee for the Pirelli application.

We therefore think it is useful to summarise the position on the application for your committee report, particularly in terms of our comments which we trust are useful in reviewing your recommendation, which we would invite you urgently to do.

**The Considerations**

The considerations are:

1. The Pirelli site is an out of centre site in retail planning policy terms.
2. The Pirelli site is located in Flood Zone 3. It is in an area of high risk flooding.
3. The Peel Croft site is a sequentially preferable site that is available and suitable for the Aldi store proposed at Pirelli. That couldn't be clearer from the location of the site within Burton town centre, the outline permission that exists and the subsequent reserved matters approval that was issued last month. The reserved matters approval provides not only sufficient retail floorspace to accommodate an Aldi foodstore, a store has been designed specifically to accommodate it.

4. The proposed development site is available now. The retail units can be open for trading within a 12 month period.
5. Peel Croft is located in Flood Zone 2 in 'Areas benefiting from flood defences'
6. The social and economic benefits that flow from the Peel Croft development are substantial when compared to Burton.
7. The social and economic benefits at Peel Croft include new economic retail and service land uses to be provided at a sustainable and accessible town centre location in accordance with the development plan and National Planning Policy Framework ('The Framework'). These land uses will create a wide range of employment positions.
8. The social and economic benefits of the development of the Peel Croft are far greater than the delivery of the retail development in the town centre. The development of Peel Croft will enable the delivery of a New Sports Hub to be provided at Tatenhill. This is a policy requirement of the development plan, which is based on evidence directly from the Council's Outdoor Sport Delivery and Investment Plan for outdoor sports facilities, which itself is a material consideration.
9. The proposed development at Peel Croft secures sustainable economic growth at both the Peel Croft site and the New Sports Hub in Tatenhill, which in turn supports sustainable economic development as part of the adjacent sustainable urban extension at Branston Locks.
10. The requirements for a new sports facility are that it will meet an identified deficiency in sports provision in Burton as well as serving housing growth planned at a sustainable residential and commercial urban extension in Burton known as Branston Locks. The facility will also serve the new secondary school on land adjacent to the new Rugby Club facility.
11. The role that the New Sports Hub will fulfil is so widely understood that it formed the basis for the whole sports delivery and investment plan for Burton that resulted in the planning policy for the New Sports Hub at Tattenhill.
12. Put clearly, the delivery of the New Sports Hub is of strategic importance.
13. The development plan is up to date having been adopted in October 2015.
14. Paragraph 27 of The Framework is explicit. It states that where an application fails to satisfy the sequential test it should be refused. Strategic Policy 21 of the Local Plan requires applications that fail to satisfy the sequential test to be refused.
15. Paragraph 103 of The Framework requires a Flooding sequential test. The applicant of the Pirelli site has not provided one assessing the Peel Croft site.
16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires by law that the Local Planning Authority determine planning applications in accordance with the development plan, unless material considerations state otherwise.
17. The Courts have confirmed that where there is a breach of planning policy, the material considerations have to be very powerful to outweigh such a breach.

## Conclusion

In the light of the above the conclusions on the application are:

1. The Pirelli application fails to satisfy the sequential test. Peel Croft is a sequentially preferable site in Burton town centre that is available and suitable for the proposed development. The proposed Pirelli site application should be refused under Strategic Policy 21 of the Local Plan and Paragraph 27 of The Framework. This is a significant adverse impact of the Pirelli site application.
2. The proposed foodstore at the Pirelli application site has a direct significant adverse impact on the delivery of a foodstore at Peel Croft in Burton town centre. Again this conflicts with Paragraph 27 of The Framework and Strategic Policy 21.
3. Developing the Pirelli site for a foodstore poses a significant risk to the ability for the New Sports Hub to be provided at Tatenhill in conflict with the development plan including Policies 7 and 32 of the Local Plan and the Council's evidence based Outdoor Sport Delivery and Investment Plan. This is a significant adverse impact of the Pirelli site application which should be afforded substantial weight as a material consideration weighing against the grant of planning permission.
4. The Pirelli site application is at a site that is at a significantly higher risk of flooding than Peel Croft. The applicant of the Pirelli site application has failed to properly apply the flooding sequential test by omitting to consider the Peel Croft site. The application is therefore procedurally and substantively deficient as it does not comply with Paragraph 103 of The Framework.

The above are all adverse impacts of the Pirelli application and provide the Local Planning Authority's starting point for the consideration of the application. As a starting point, the adverse impacts are significant and weigh firmly against the grant of permission. There is therefore no requirement to invoke any further considerations. The duty is upon the Council as decision-taker to refuse the application under the terms of Section 38(6) of the Act 2004.

Paragraph 14 of The Framework, sets out the presumption in favour of sustainable development. It requires that development proposals that accord with the development plan to be approved without delay. The corollary is therefore also the case – applications that do not accord with the development should be refused.

Paragraph 14 provides a balancing judgement only *'where the development plan is absent, silent or relevant policies are out-of-date...'*. Clearly that can't apply given the date and content of the development plan. It is up to date. It contains policies on retail, flooding and sports provision that are all up to date. It is therefore neither absent nor silent on policies that require the Council to refuse the Pirelli site application. The tilted balance of Paragraph 14 cannot apply.

Even if the balancing judgement of Paragraph 14 did apply – and it does not - that only provides a provision that permission should be granted unless: *'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.'*

Those adverse impacts (including a direct conflict with Paragraph 27 of NPPF which mandates refusal) heavily weigh against the grant of permission before any balancing judgement is invoked. There can be no material considerations of any powerful merit that could result in the Council approving the application for an Aldi store at the Pirelli site and tilting the balance to a point that the benefits of approval would significantly and demonstrably outweigh the adverse impacts of approving the application.

Put simply, the only conclusion that can be reached is that the Council has to refuse planning permission.

Finally, we have discussed this matter with Leading Counsel, and its content has been specifically agreed by him, we trust that you too will take legal advice before proceeding further. We are advised that as matters

stand any decision to grant planning permission in these circumstances would be challengeable given the duties placed on the Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "Savills", is written over a light grey rectangular background.

**Savills (UK) Limited**

We understand that Officers have not written its report to Committee for the Pirelli application and therefore think it is useful to summarise the position on the application for your committee report, particularly in terms of our comments which we trust are useful in reviewing your recommendation, which we would invite you urgently to do. The summary of the position on the application is included in the attached letter and for ease of reference, I set out the conclusions here.

As a starting point, the adverse impacts of the Pirelli application are significant and weigh firmly against the grant of permission. There is therefore no requirement to invoke any further considerations. The duty is upon the Council as decision-taker to refuse the application under the terms of Section 38(6) of the Act 2004.

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