

Planning Committee

13th October 2022

Reference:

APP/21/02188

Area Team:

DM

Case Officer:

Mr B Bechka

Ward:

Liscard

Location:

CAR PARK, CHERRY TREE SHOPPING CENTRE, 6-8 CHERRY SQUARE, LISCARD, CH44 5XU

Proposal:

Retrospective permission sought for erection of 2 no. pole mounted ANPR and 1 no. wall/pole mounted ANPR cameras to the Car Parks. Replacement of existing 4 no. Pay and Display Machines.

Applicant:

Mr P Coakley

Agent :

Ms Emily Hughes JMW

Qualifying Petition

2

Site Plan:



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**Development Plan
designation:**

Key Town Centre

Planning History:

Location: Car Park, St Albans Road, Liscard, Wirral, CH44 5XY

Application Type: Full Planning Permission

Proposal: Retention of lighting column in car park Mill Lane/St Albans Road.

Application No: APP/07/05649

Decision Date: 29/06/2007

Decision Type: Approve

Location: Car Park Mill Lane and 15 & 17 Greenfield Way, Liscard, Wirral, CH44 5XN

Application Type: Full Planning Permission

Proposal: Refurbishment and extension of existing shopping centre and erection of a 2 storey car park (amended proposal)

Application No: APP/05/07098

Decision Date: 28/10/2005

Decision Type: Approve

Location: Cherry Tree Shopping Centre, Liscard, Wirral, CH44 5XU

Application Type: Advertisement Consent

Proposal: Erection of a nine non illuminated vertical banner signs

Application No: ADV/02/05360

Decision Date: 15/04/2002

Decision Type: Approve

Location: Car Park Mill Lane and 15 & 17 Greenfield Way Liscard, Wirral, CH44 5XN

Application Type: Outline Planning Permission

Proposal: Demolition of existing market unit, extension of existing shopping centre and new 2 storey car park ,outline. (Amended Plans)

Application No: OUT/03/05358

Decision Date: 23/04/2004

Decision Type: Approve

Location: Car Park Mill Lane and 15 & 17 Greenfield Way Liscard, Wirral, CH44 5XN

Application Type: Full Planning Permission

Proposal: Refurbishment and extension of existing shopping centre and erection of a 2 storey car park.

Application No: APP/04/07863

Decision Date: 10/03/2005

Decision Type: Approve

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| | <p>Location: Car Park, Mill Lane, (Principal Road A551), Liscard, CH44 5UG</p> <p>Application Type: Deemed</p> <p>Proposal: Construction of access to Wirral Borough Council car park.</p> <p>Application No: DPP/78/10941</p> <p>Decision Date: 11/12/1978</p> <p>Decision Type: Approve</p> |
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Summary Of Representations and Consultations Received: A total of 24 consultation letters were sent out to neighbouring properties

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| 1. Ward Member Comments | <p>Councillor Kenny requested that this application be rejected on the grounds that it:</p> <ul style="list-style-type: none"> • results in a negative impact on local businesses; • undermines the Liscard Action plan and Regeneration of Liscard; and • fails to comply Wirral Council Blue Badge Policy, therefore breaching the Equality Act 2010 |
| 2. Summary of Representations | <p><u>REPRESENTATIONS</u></p> <p>13 no. representations were received from neighbouring properties. A summary of these representations are listed as follows:</p> <ul style="list-style-type: none"> • negatively impacting on small businesses/viability of town centre/ community; • stressful and costly; • parking machinery, system, and appeals process difficult to use (accessibility); • concern as to cameras impact on privacy/GDPR; • cameras overlook neighbouring school; • cameras installed and operated without prior permission; |

- unjust issuing of fines and penalties; and
- impact on the ability of parishioners to park locally whilst attending mass at St Alban's Church

An online petition from residents has been received, which at the time of writing this report had 900 signatures against it. The online petition asked that this application be refused on the grounds that:

- Smart Parking's cameras and signs are damaging the reputation of Liscard Town Centre;
- Smart Parking are causing a negative impact on the local economy;
- Smart Parking has an inadequate process for disabled badge holders, leading to the harassment of people with disabilities;
- The mismanagement of this car park by Smart Parking has led to an increase in people parking in nearby residential areas;
- There is a very poor customer experience including unclear signage, difficult to use machines and penalty charge letters being sent in a very small font; and
- Smart Parking's operations go against Wirral Council's plans for the regeneration of Liscard Town Centre.

A paper petition from local businesses, comprising of 30 signatures, was also received which asked that this application be refused on the grounds that:

- Smart Parking's automated camera system, signage and inadequate processes are not fit for purpose;
- the damage the operation of the car park is doing to their businesses, as well as Liscard Town Centre; and
- would result in them having to either cease trading or relocate out of Liscard.

Following the application being deferred from Planning Committee on 9th June 2022, and the receipt of a Viability Impact Assessment and Operational Management Plan, a re-consultation of 38 properties was carried out. No additional concerns were raised over and above those already set out.

CONSULTATIONS

Received: 4

Highways (Traffic & Transportation): No objection

The development proposals are all located within the private boundary to the car park and do not impact on the adopted highway.

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| | <p>The positioning of the 3no. pole mounted ANPR units and 3 no. wall mounted ANPR cameras within the car park, and the replacement of the existing 4 no. Pay and Display Machines do not impact on the circulation routes through the car park nor do they obstruct pedestrians or impact on driver visibility. On that basis there would be no Traffic and Transportation objection to the proposals.</p> <p>Highways (Asset): No objection</p> <p>Forward Planning: No objection</p> <p>Regeneration: None received</p> <p><u>UPDATED CONSULTATIONS:</u></p> <p>Regeneration and Place: No objection</p> <p>In the public consultation that took place in October/November 2020 as part of the development of the Liscard Neighbourhood Framework, respondents expressed concern over the reduction in parking provision across the Town Centre and there were multiple calls for free parking. However, charging for car parking in town centres is the norm across most of the UK, so the principle of a privately owned town centre car park charging for use is not unusual, and increasingly ANPR cameras are used to manage these car parking operations. As such the Regeneration and Place team does not have grounds to object to the planning application to install such cameras and associated signage</p> |
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| <p>3.1 Planning Committee Deferral</p> | |
| <p>3.1.1</p> | <p>The application has been called in by Councillor Kenny on the grounds that it results in a negative impact to local businesses; undermines the Liscard Action plan and Regeneration of Liscard; and it fails to comply Wirral Council Blue Badge Policy, therefore breaching the Equality Act 2010. Furthermore, two qualifying petitions of over 25 signatures, one online and one paper, have been received from local residents and businesses.</p> |
| <p>3.1.2</p> | <p>Both this planning application and that of the accompanying advert consent, ADV/21/02183, were deferred at the previous Planning Committee on 9th June 2022 and following more time to liaise with the applicant and Council's Economic Development team in relation to the impact of the scheme on the vitality of Liscard Town Centre, is to be presented to Planning Committee again.</p> |

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| 3.2 Site and Surroundings | |
| 3.2.1 | The application site relates to a large car park sited to the front of and serving the Cherry Tree Shopping Centre within Liscard Key Town Centre. The car park is divided into two by a large vehicular ramp. It can be accessed via Mill Lane to its south eastern boundary and from St Alban's Road to south western boundary. |
| 3.2.2 | Sited to the south-west and to the opposite side is St Alban's church and St Alban's Primary School. The backs of the properties to Ashburton Road also face onto the car park. To south-east and to the opposite side of Mill Lane are residential properties, which front directly on to the car park. To its north east and north west the car park is bound by office buildings. |
| 3.3 Proposed Development | |
| 3.3.1 | <p>Planning permission is sought for the retention of:</p> <ul style="list-style-type: none"> • 2 no. ANPR cameras (ANPR 4 & ANPR 5) which are fixed to an existing pole approximately 7.8m high lighting column, at heights of 3.88m and 4.05m, respectively, above the ground; • 1 no. ANPR camera (ANPR 3) mounted to an existing pole. Sited to south-east facing elevation of shopping centre, the ANPR camera is sited 4.25m above the ground; • 4 no. 1.7m high Pay and Display machines. |
| 3.3.2 | 2 no. wall mounted ANPR cameras are sited to the south-west elevation of the shopping centre, however, given their siting to the building, their distance apart (i.e. greater than 10m), and limited number (i.e. less than 16), are considered to meet the relevant criteria of Class F of Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), thus fall under permitted development rights. The car park forms a separate planning unit to that of the Cherry Tree Shopping Centre. Cameras ANPR 4 & ANPR 5 not being sited on a building cannot benefit from permitted development rights under Class F and as such require planning permission. Camera ANPR 3, although technically attached to a building, is attached to a pole with an existing CCTV camera to its top and would as a result sit within 10m of another camera, thus requires planning permission. |
| 3.3.3 | An application for consent of adverts in relation to the use of the car park was granted in September 2022. |
| 3.4 Development Plan | |

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| 3.4.1 | <p>The Development Plan for the area comprises saved policies of the Wirral Unitary Development Plan (2000) and policies of the Merseyside and Halton Joint Waste Local Plan (2013). The full text of relevant policies and their supporting justification can be found on the Council's website. With regard to this application, with the following applicable to this application:</p> <p><u>Wirral Unitary Development Plan Policy</u></p> <p>Policy SH1: Criteria for Development in Key Town Centres</p> |
| 3.5 Other Material Planning Considerations | |
| 3.5.1 | <p>The National Planning Policy Framework (NPPF) was revised in July 2021. The NPPF will be referred to as appropriate within this report.</p> |
| 3.5.2 | <p><u>Emerging Wirral Local Plan and its status:</u></p> <p>Wirral Borough Council is in the process of submitting a new local plan for examination.</p> <p>On the 21 March 2022 full council approved publication of the Draft Local Plan Under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012 before submission to the Secretary of State. The plan has been published and representations were available to be submitted until 25th July 2022</p> <p>In attaching weight to emerging plans such as Wirral's para 48 of the NPPF is relevant as it states:</p> <p>"Local planning authorities may give weight to relevant policies in emerging plans according to:</p> <ul style="list-style-type: none"> a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)." |

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| | As the Wirral Local Plan is at an early stage it is a Material Consideration and can be afforded limited weight in the decision-making process. |
| 3.6 Assessment | |
| 3.6.1 | <p>The main issues pertinent in the assessment of the proposal are;</p> <ul style="list-style-type: none"> • Principle of development • Design; • Highways; and • Amenity |
| 3.7 Principle of Development | |
| 3.7.1 | The principle of the proposed development is deemed acceptable subject to its impact on visual and residential amenity and to the local highway network. |
| 3.8 Design | |
| 3.8.1 | The assortment of street furniture which this application seeks to retain is considered of an appropriate scale within the context of a town centre location and an established, commercial car park of this type and size. The largest of the street furniture, the approximately 7.8 lighting column was in-situ prior to the ANPR cameras being installed. The mounted cameras sit around half way up this column, 3.88m and 4.05m, respectively, above the ground. They do not appear out of place against the column. The works to be retained, given the significant size of the application site, do not lead to any visual clutter or appear visually obtrusive within the street scene and therefore their retention would not result in a detrimental change in the character of the area. The other features are all small scale and will have little visual impact within the car park. |
| 3.9 Highways | |
| 3.9.1 | The locations of the ANPR cameras and Pay and Display machines are all contained within a private boundary and do not impact on the circulation routes through the car park nor do they obstruct pedestrians or impact on driver visibility. On that basis there would be no Traffic and Transportation objection to the proposals. The online petition voices concern as to the mismanagement of the car park having led to an increase in the number of people parking in nearby residential area, however, no evidence has been provided to |

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| | substantiate this claim or as to what impact it is having on the nearby residential areas. Furthermore, in their comments Highways have not raised any concerns about the displacement of parking on the local highway network as a result of the development. |
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| 3.10 Ecology | |
| 3.10.1 | There are no Environmental/Sustainability issues relating to these proposals. |

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| 3.11 Amenity | |
| 3.11.1 | The ANPR cameras sited well within the application site, with 2 no. cameras being mounted to an existing lighting column, and 1 no. camera to an existing pole which is fixed to the south-east elevation of the shopping centre. The closest of the cameras would retain a minimum separation distance of approximately 63m to the residential properties sited to the opposite side of Mill Lane. Given their siting and scale, it is considered that the retention of these cameras would not result in any visually intrusive impact or result in any adverse overlooking or loss of privacy to nearby residential properties. Furthermore, given the siting and modest scale of the Pay and Display machines and that they have replaced similar Pay and Display machines, their retention is unlikely to have any harmful visual impact upon nearby residential properties. |

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| 3.12 Other | |
| 3.12.1 | None of the adopted UDP Policies directly relate to the operation of parking equipment. |
| 3.12.2 | However, Policy SH1 refers to use classes aimed at retail, not parking. Cherry Tree car park is classed as a sui-generis use. Furthermore, Policy SH1 does not specifically apply to parking or its operation, but to buildings and the change of use of those buildings within the context of a Key Town Centre. |
| 3.12.3 | With regard to Policy SH6, this is not considered to be a relevant policy for the purposes of assessing this application against, given that it refers to Primarily Commercial Areas. The application site is instead located within a designated Key Town Centre location. |
| 3.11.4 | As such, there is no policy basis for refusing the parking equipment. The site is an established commercial car park and the operational matters of the car park, and its equipment sit outside the remit of planning. |
| 3.12.5 | Concerns have been raised as to the operation of the car park and the existing processes that Smart Parking have in place, stating that this has resulted in users, and in particular disabled users being unfairly penalised. |
| 3.12.6 | In responding to the above concern, it is, however, noted that Cherry Tree car park is privately owned and maintained, and the Council therefore does not have the powers to intervene in terms of the parking facilities or the regulation of them. Blue badge rights/exemptions do not apply to private roads and/or car parks in the same way as they do to public roads/car parks. |

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| 3.12.7 | Smart Parking is a service provider for the purposes of the Equality Act 2010, and that they have a duty to make reasonable adjustments to avoid disabled people being placed at a 'substantial disadvantage' compared to non-disabled people when accessing the car park service. However, by providing disabled parking bays it would appear that Smart Parking have made the requisite reasonable adjustments to the car park and may even be considered to have gone beyond 'reasonable adjustment' by allowing blue badge holders to park for free for up to three hours. |
| 3.12.8 | Disabled users of the car park have the right to contest tickets wrongly issued and to take action if the incorrect enforcement of the car parking regulation is carried out in a way that breaches the Equality Act 2010. However, this is separate to the statutory provisions relating to determination of planning applications, which require decisions to be made on the basis of the development plan unless material considerations indicate otherwise. |
| 3.12.9 | There is a government 'Private Parking Code of Practice', published by DLUCH, which operators such as Smart Parking will need to adhere to. The concerns raised by residents and local business as to the operation of this car park, need to be addressed through this code of practice rather than through this application. |
| 3.12.10 | Furthermore, planning should not duplicate controls through other legislation. It would not be appropriate in recommending this application for approval to attach any conditions relating to the operation of the car park, which would in effect be requiring compliance with other regulatory requirements. |
| 3.12.11 | Concern is raised as to the impact of the development and its operation upon Liscard Action Plan and the planned regeneration of Liscard. Liscard Action Plan is a non-statutory document, which has been superseded by the 'Liscard Neighbourhood Framework for Liscard: An Integrated Masterplan', published in November 2021. The masterplan is intended to inform the emerging Local Plan and is not intended as a blueprint. Whilst mention is made to car parking in this document and in particular parking within the Cherry Tree Centre, it puts forward options for the site, which may see the release of some of the land currently being used for parking for new development, which may or may not result in the arrangement and size of the parking provision to better serve the town centre and the visions for the town centre moving forward. It does not refer to the operation of parking at the Cherry Tree Centre or for the need for free parking. |
| 3.13 | <u>Update following the referral from 9th June 2022 Planning Committee:</u> |
| 3.13.1 | Whilst not objecting to this planning application, the Council's Regeneration and Place team recognise the issues the introduction of these new technologies can cause some individuals who are unfamiliar or uncomfortable with these new approaches, especially when they are enforced in an overly draconian manner. They acknowledge that it may deter individuals from visiting the town centre at a time when retail generally is suffering, and footfall is vital to the ongoing health and vibrancy of the town centre, and as such, they will look to arrange a meeting with the Cherry Tree Centre's Management Company to encourage them to apply a level of leniency in the enforcement of parking infringements in their car park and explore what additional support they can provide for individuals who are struggling to understand the new car park charging system. Regeneration and Place also ensure that the developer who is currently considering an option to acquire and refurbish the Cherry Tree Centre is aware of the concerns around the current car park management |

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| | <p>arrangements and, if they take up the option and acquire the centre, encourage them to implement car park management arrangements which are easy to understand and straightforward to use.</p> |
| 13.13.2 | <p>In answer to concerns raised by received representations and by members at the 9th June 2022 Planning Committee, the applicant has submitted an impact assessment of their operations on the vitality of Liscard Town Centre. The evidence presented is inconclusive, however, the applicant argues that in the time Smart Parking has been in operation and enforcing at the application site, there has been no significant dip in attendance figures within this timeframe and that figures show that general attendance of the Cherry Tree Shopping Centre have increased. They acknowledge that the previous year's figures for the Centre are not truly representative, given that the nation was in the midst of Covid restrictions. In the assessment, if looking on a month-by-month basis, the applicant also recognises that attendance figures are down from the average expected for that time of year. However, they counter these figures by arguing that the decrease is due to the negative impact Covid and latterly the cost-of-living crisis is having on the economy. Furthermore, using figures shown within the assessment for the 7-day rolling average for all retail sites Smart Parking manages, that this is a national occurrence and not specific to the Cherry Tree Shopping Centre site.</p> |
| 13.3.3 | <p>The applicant has also provided an Operational Management Plan which aims to set out a clear strategy as to how Smart Parking will manage and maintain the site. It sets out four aims and objectives which seek to:</p> <ul style="list-style-type: none"> • achieve effective enforcement to discourage non-compliant motorists from abusing the site, whilst ensuring parking remains available for those they are intended for; • make the experience for the compliant motorist as seamless as possible with regards to payment; • clearly communicate Smart Parking's terms of operation through effective signage; and • facilitate clear and accessible appeals process for any motorist to access who believe a PCN has been unfairly issued or where there is appropriate mitigation. |
| 13.3.4 | <p>Smart Parking have employed 2 no. parking attendants whose duty is to assist motorists with any parking queries or paying for a parking session on site. The staff are trained in line with Smart Parking's requirements and to British Parking Associations Code of Practice standards. The parking attendants serve both to ensure that compliant motorists are assisted to pay for their parking session and to carry out enforcement action on any non-compliant motorist (i.e. those seeking to abuse blue badge bays). In addition, the plan sets out that in the maintenance of the site, Smart Parking is also contractually obliged to carry out significant maintenance works (i.e. resurfacing of the car park). Photographs submitted alongside the plan show such works that have recently been carried out. In further achieving the aims set out within the plan and in addition to site management carried out by the parking attendants, Smart Parking maintains a system of appeals allowing motorists to challenge PCNs they believe are unfair. Finally, through the use of technology Smart Parking gives every motorist several ways to pay for their parking. In addition to paying the parking attendants, motorists can pay using their smart phones through the Ringo app, with the help of signage posted throughout the site. For those who do not have access to smart phones or struggle with the app, payment can be made using the 'Flowbird' pay and display machines which are designed to facilitate easier payment.</p> |

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| 13.3.5 | The submitted Operational Management Plan would appear to touch on some of the issues raised within the Council's Regeneration and Place team's comments. It should also be noted that in addition to the Regeneration and Place offer to engage with the applicant to address the issues raised, Smart Parking have in their management plan voiced their willingness to work with Wirral Council to maximise effective parking management at the Cherry Tree Shopping Centre. |
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| 13.3.6 | <p><u>Conclusion</u></p> <p>Although concerns have been raised about the impact that the operation is having on the vitality of the Liscard Key Town Centre, charging for car parking in town centres is a widely accepted practice across the UK, as are the use of ANPR cameras and associated signage to manage their operation. Despite the submitted impact assessment of Smart Parking's operations on the vitality of Liscard Town Centre being inconclusive in its findings, no evidence has been provided by those making representations against the development in order to substantiate their claims as to the operation of the car park and its negative impact upon the vitality of the Liscard Town Centre. Furthermore, as set out above, there exists no planning policy basis for refusing the parking equipment. Additionally, with respect to the concerns raised within submitted representations about the processes and operation of the car park leading to its users, and in particular disabled users being unfairly penalised, as a privately owned and maintained car park the operational matters of the car park and its equipment sit outside the remit of the planning process and the Council does not possess the powers to intervene in such matters. Instead, there exists separate legislation and regulations for the operation and maintenance of car parks, which the operator must comply with. It is not the place of the planning process to duplicate such controls through other legislation, nor would it be appropriate in recommending this application for approval to attach any conditions relating to the operation of the car park, which would in effect be requiring compliance with other regulatory requirements.</p> |
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| Summary of Decision | Having regards to the individual merits of this application the decision to grant Planning Permission has been taken having regards to the relevant Policies and Proposals in the Wirral Unitary Development Plan (Adopted February 2000) and all relevant material considerations including national policy advice. In reaching this decision the Local Planning Authority has considered the following:- |
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| | The proposed retention of the various street furniture relating to the car park management and also including the 3 no. pole mounted and 2 no. wall mounted ANPR cameras would result in no adverse effect on visual or residential amenity, and highway or public safety. The application is therefore considered to be in accordance with Policy SH1 of Wirral's Unitary Development Plan. |
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| Recommended Decision: | Conditional Approval |
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| Recommended Conditions and Reasons: | |
| 1. The development hereby permitted shall be carried out in accordance with the approved plans received by the local planning authority on 15th November 2021 and listed as follows: | |

2460//22/01/A, received 31st March 2022;

2460//22/06, received 30th March 2022;

Pay and Display Machine elevation, received 23rd March 2022;

'R50 lampost mount', received 23rd March 2022;

'R50IQ pole mount Dims', received 23rd March 2022;

2460//22/04, received 23rd March 2022;

2460//22/05, received 23rd March 2022; and

Master ANPR Cameras -Cherry Tree excel spreadsheet received 9th May 2022.

Reason: For the avoidance of doubt and to define the permission.

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| Last Comments By: | 02-September-2022 |
| Expiry Date: | 18-May-2022 |