

Appeal Decision

Site visit made on 22 September 2016

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 25 October 2016

Appeal Ref: APP/B3030/W/16/3152391

**Minster Veterinary Centre, Maltkiln Lane, Newark on Trent,
Nottinghamshire NG24 1HN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr D Sparks on behalf of Minster Veterinary Centre against the decision of Newark and Sherwood District Council.
 - The application Ref 16/00393/FUL, dated 7 March 2016, was refused by notice dated 20 May 2016.
 - The application sought planning permission for an extension and new car park without complying with a condition attached to planning permission Ref 15/01996/FUL, dated 5 January 2016.
 - The condition in dispute is No 8 which states that: No part of the development hereby approved shall be brought into use unless or until a new 2.0m wide footway adjacent to the west side of Maltkiln Lane has been provided in accordance with plans first submitted to and approved in writing by the Local Planning Authority.
 - The reason given for the condition is: To promote sustainable travel and in the interests of highway safety.
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Decision

1. The appeal is allowed and planning permission is granted for an extension and new car park at Minster Veterinary Centre, Maltkiln Lane, Newark on Trent, Nottinghamshire in accordance with the application Ref 16/00393/FUL, dated 7 March 2016, without compliance with condition 8 previously imposed on the planning permission Ref 15/01996/FUL, dated 5 January 2016, but subject to a revised condition 8 and the other conditions previously imposed which are set out in the schedule attached to this decision.

Reasons

2. The initial application resulted in permission being granted to extend the existing veterinary centre and provide a car park to the rear. Condition 8 requires that a new two metres wide footway adjacent to the west side of Maltkiln Lane be provided. The application seeks to remove that requirement.
 3. Paragraph 206 of the *National Planning Policy Framework* states that planning conditions should only be imposed where they are necessary, relevant to
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planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. It has been established through the courts that a condition must fulfil some planning purpose; it should fairly and reasonably relate to the development being allowed; and it should not be unreasonable.

4. I have been provided with the three plans listed in the original decision. These do not identify the location of the pavement referred to in the condition. Maltkiln Lane extends from Trent Lane all the way around the bend to the 'Hoval' works entrance. It is not clear from the condition whether the intended footpath should be located between the site and Trent Lane; across the front of the appeal site; alongside the proposed parking area; or a combination of these sections of road to the west of Maltkiln Lane.
5. The Highway Authority comments of 18 November 2015 indicate that a footway link should be provided between the site and Trent Lane along the west side of Maltkiln Lane. The plans submitted as part of the appeal show the extent of the highway ownership between Trent Lane and the appeal site. Based on this information, my understanding is that the footpath would extend only from the corner of the appeal site to the junction with Trent Lane where a footpath terminates. Without the aid of the additional information, the condition is insufficiently precise.
6. The new section of pavement would allow for access from the appeal site to and from the retail park to the west without the need to cross Maltkiln Lane. It would also connect into the wider footpath network. Given the worn nature of the verge it would appear that this is already a desire line for pedestrians. As the initial proposal was to extend the existing veterinary centre, it is reasonable to assume that this would increase the existing demand for access. I am satisfied that measures to improve accessibility would fulfil a planning purpose and would go some way to support Spatial Policy 7 of the Core Strategy 2011 which promotes sustainable modes of travel and the provision of safe, convenient and attractive access for all.
7. I have been provided with no evidence to demonstrate that the requirement would fairly and reasonably relate to the development being allowed. There are a number of units beyond this site which appear to have been recently constructed including a retail warehouse, gym and children's play-centre. The required pavement would serve the original veterinary customers, the additional customers but also the visitors and workers to the other uses in Maltkiln Lane.
8. The new units in Maltkiln Lane are only served by the footpath on the opposite side of the road. This terminates before the new retail unit. Access on foot to the gym and the play-centre then requires pedestrians to walk within the road. Access to the retail unit is similarly either via the road or between the parked cars in the marked bays. As visitors to these units are already required to walk within the road, I consider it likely that they would also use the new footpath to take the shorter route to the retail park.
9. I am not satisfied that the proposed works would fairly and reasonably relate to the extension and the alterations proposed. It would serve significantly more pedestrians than those resulting from the greater size of this unit. To require

the entirety of the cost of such works to fall on the appellant would be overly onerous and would appear to be unreasonable, particularly as I have no evidence to suggest that footway improvements have been required with regard to the other new uses beyond this site.

10. In comparison to the other units in Maltkiln Lane, the appeal site is well served with regard to pedestrian access. Pedestrians need only cross the road and use the existing pavement which links to crossing points which allow access towards the retail park. I acknowledge that the existing pavement does not have a dropped kerb which would hinder users in wheelchairs, mobility scooters and with pushchairs but this situation already exists in relation to the existing facility. The appellant has suggested that a condition to require a dropped kerb within the existing footpath would address this concern and would represent a more appropriate requirement.
11. I agree that the provision of a dropped kerb opposite the site would allow for improved access. It would provide access from the proposed disabled bays and the main entrance of the site. Although there would be some conflict with the out-of-hours access, I am not satisfied that this would result in concerns with regard to highway safety. It would also enable the existing hedge to be retained which is of benefit with regard to the appearance of the area.
12. Overall, whilst a new pavement would be of some benefit, I am not satisfied that the scale of the requirement is commensurate with the benefits or that it would relate fairly or reasonably to the development proposed. The condition is not in any event, sufficiently precise. I therefore allow the appeal. I do however consider that a condition requiring a dropped kerb opposite the site would meet the six tests within the *Framework*. It would also fulfil a planning purpose; be fairly and reasonably related to the development; and it would represent a reasonable and necessary requirement.
13. In allowing the appeal, a new planning permission is created. The original permission contains a number of conditions. The *Planning Practice Guidance* makes clear that decision notices under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have no information before me about the status of the other conditions imposed or whether matters remain outstanding. I have therefore imposed all those that I consider remain relevant. In the event that some have been discharged, that is a matter which can be addressed by the parties.
14. I have altered condition 8 to eliminate the requirement for a new footpath and to require a dropped kerb and associated textured paving. I have also altered condition 1 so that it retains the implementation date of the original permission. I have excluded condition 11 which states that no advertisement is approved by this permission as such a condition is not necessary given the requirements of the Advertisement Regulations.

Peter Eggleton

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall not begin later than 4 January 2019.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the following approved plans: MV 497-A100; MV 497-A 1002 Rev P3, MV 497-A603 Rev P6.
- 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building in terms of type, colour and texture, size, profile and bonding pattern unless otherwise agreed in writing by the local planning authority.
- 4) No development shall be commenced until details of the external colour/finish of the cedar cladding has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and retained thereafter.
- 5) No development shall be commenced until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:
 - a) A schedule designed so as to enhance the nature conservation value of the site, including the use of locally native plant species (including planting plans and written specifications, including cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities;
 - b) Means of enclosure;
 - c) Car parking layouts and materials; and
 - d) Hard surfacing materials.
- 6) The approved landscaping shall be completed during the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the local planning authority. Any trees/shrubs which, within a period of five years of being planted, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority.
- 7) No development shall be commenced until details of any external lighting have been submitted to and approved in writing by the local planning authority. The details shall include location, design, levels of brightness and beam orientation, hours of illumination, together with measures to minimise overspill and light pollution. The lighting scheme shall be carried out in accordance with the approved details and the measures to reduce overspill and light pollution shall be retained thereafter.
- 8) No development shall be commenced until details of a dropped kerb and appropriately profiled surfacing within the pavement opposite the site has been submitted to and approved in writing by the local planning authority.

No part of the development hereby approved shall be brought into use until the approved works have been completed in accordance with these details.

- 9) No part of the development hereby approved shall be brought into use until the vehicle access, visibility splays, parking and servicing areas have been provided as shown on drawing MV497-A1002 Rev.P3. The parking and servicing areas shall not be used for any purpose other than parking, loading and unloading of vehicles.
- 10) No part of the development hereby permitted shall be brought into use until an existing site access that has been made redundant as a consequence of this consent and as shown on plan MV497-A1002 Rev.P3 is permanently closed and the access crossing reinstated as verge/footway as appropriate in accordance with details to be first submitted to, and approved in writing by, the local planning authority.
- 11) No development shall take place until details of a scheme for archaeological mitigation has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.