The Planning Inspectorate

Appeal Decision

Hearing Held on 3 July 2019

Site visit (unaccompanied) made on 2 July 2019 16:45-17:30

Site visit (accompanied) made on 4 July 2019 08:00-08:45

by Andrew R Hammond MA MSc CEng MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2019

Appeal Ref: APP/Y3615/C/18/3200526
Land at the Royal Surrey County Hospital, Egerton Road, Guildford GU2 7YX registered at HM Land Registry under the Title number SY413356 shown edged red on the attached plan.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Royal Surrey County Hospital NHS Foundation Trust against an enforcement notice issued by Guildford Borough Council.
- The enforcement notice, numbered ENF/17/00405, was issued on 16 March 2018.
- The breach of planning control as alleged in the notice is:-
  On 11 November 2015, planning permission was granted by the Council under reference 15/P/00976 with the following description: "Temporary parking provision for 388 spaces for a period of 2 years at land off Rosalind Franklin Close for hospital use." The permission was subject to condition 1 which stated:
  The use hereby permitted shall be for a temporary period expiring on 31 December 2017 on or before which date the use shall be discontinued and the land restored to its former condition, prior to its use as a car park.
  It appears to the Council that the condition referred to above, attached to the temporary planning permission 15/P/00976, has not been complied with because the land continues to be used as a car park and the land has not been restored to its former condition prior to its use as a car park.
- The requirements of the notice are
  Comply with condition 1 of 15/P/00976 by taking the following steps
  1) Cease using the land as a car park
  2) Restore the land to its former condition prior to its use as a car park by:
     a) removing the vehicles from the land;
     b) removing the hard surfacing from the land;
     c) removing all lighting from the land;
     d) removing the barrier from the land;
     e) removing all cameras from the land;
     f) removing the height restricter *(sic)* from the land;
     g) removing all other equipment and paraphernalia associated with the car park use; including signage, from the land;
     h) re-seeding the land with grass.
- The period for compliance with the requirements is 12 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) & (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be corrected by the substitution of the description of the alleged breach with the words "failure to comply with condition 1 of planning permission 15/P/00976 which stated '*The use hereby permitted shall be for a temporary period expiring on 31 December 2017 on or before which date the use shall be discontinued and the land restored to its former condition, prior to its use as a car park.*

2. It is further directed that the enforcement notice be corrected: by the deletion of the words "Comply with condition 1 of 15/P/00976 by taking the following steps
    1) Cease using the land as a car park and remove all vehicles from the land.
    2) Restore the land to its former condition prior to its use as a car park by:
        a) removing the vehicles from the land;
        b) removing the hard surfacing from the land;
        c) removing all lighting from the land;
        d) removing the barrier from the land;
        e) removing all cameras from the land;
        f) removing the height restricter *(sic)* from the land;
        g) removing all other equipment and paraphernalia associated with the car park use; including signage, from the land;
        h) re-seeding the land with grass."

    and the substitution of the words "Cease the use of the land as a car park and remove all vehicles from the land." in the requirements of the notice.

3. Subject to these corrections the appeal is allowed, and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the use for parking provision for 388 spaces on the land shown edged black on the plan annexed to this decision, subject to the Schedule of Conditions attached as Appendix A.

Application for costs

4. At the Hearing an application for costs was made by the Royal Surrey County Hospital NHS Foundation Trust against Guildford Borough Council. This application is the subject of a separate Decision.

The Enforcement Notice

5. Although clear in its intent, the allegation in the enforcement notice does not properly describe the breach which is failure to comply with a condition attached to planning permission 15/P/00976. It is beholden upon me to correct the notice in this respect.

6. The purpose of an enforcement notice is to remedy a breach of planning control or to remedy the harm to amenity. It is clear from the reasons for issuing the notice that its purpose is to remedy alleged harm to amenity caused by adverse impact on the local highway network. In order to remedy that harm to amenity it is only necessary to cease the use of the car park and remove all the vehicles from the land.

The Ground (a) Appeal

Main Issues

7. The main issue in the ground (a) appeal is whether the use of the car park causes, and would continue to cause, severe impact on the local road network and, if so, whether reasonable and enforceable measures could be put in place to mitigate that impact.

Reasons

8. Since the issue of the enforcement notice a new local plan has been adopted. Policy G1(2): Transport provision, access, highway layout and capacity of the Guildford Local Plan (2003) has now been superseded by policy ID3 of the adopted Guildford borough Local Plan: strategy and sites 2015-2034.

9. The appeal site, known as Plot 23, is an area of open land off Rosalind Franklin Close, a private road in the ownership of the hospital. The Close, which also serves University of Surrey Buildings, including student accommodation, runs off a roundabout which joins Priestly Road and Occam Road, serving the Surrey Research Park with around 140 companies and some 3600 employees. Gill Avenue which also serves the main hospital buildings. Other than a route restricted to busses and cycles, Gill Avenue is the sole vehicular access into the area from a signalled junction with Egerton Road, one arm of which crosses the railway line to the north and the other arm heads east via a roundabout, known as the Tesco Roundabout, with routes therefrom to the A3 and to central Guildford. All traffic into the area passes through the signalled junction with Egerton Road, including traffic to Surrey Sports Park, a day nursery and a Park and Ride facility, accessed via a fourth arm off the signalled Egerton Road junction.

10. Plot 23 was removed from the Green Belt under the 2003 local Plan and allocated for future hospital related development under policy CF6 (policy A17 of the newly adopted Guildford borough Local Plan: strategy and sites 2015-2034 is broadly consistent). The site has been used since at least 2004 for hospital staff parking, originally unauthorised but later with temporary permissions, 09/P/01583 granted 17 February 2010 and 15/P/00976 which approved temporary parking provision for 388 spaces for a period of 2 years. The reason for Condition 1 which limited the permission to a temporary period expiring on 31 December 2017 was to allow the local planning authority an opportunity to assess the effect on *(sic)* the proposal on the local highway and strategic network. The earlier temporary permission had a similar condition with the same reason given.

11. The latter permission was also subject to Condition 2 which required the development to be carried out in accordance with a Parking Management Plan (PMP). The PMP required, *inter alia*, permits to park on Plot 23 to be issued only to staff who would arrive and leave outside peak hours and for an installed barrier to be closed during those peak hours to prevent conflict with movements associated with other locations. The hospital claim that the use of the barrier caused more problems than it solved as it resulted in queueing and traffic backing up. Consequently, the hospital suggests that they ceased use of the barrier following discussions with local councillors.

12. Two enforcement investigations were initiated by the Council in 2010 and 2012 into alleged non compliance with Condition 3 of 09/P/01583 relating to the travel plan and hours of use. These investigations, and a further investigation in 2016 into an alleged breach of Condition 4 of 15/P/00976 specifically that the barrier to the car park was not operated in line with the approved plans, were closed as, in all cases, no evidence of a breach was identified.

13. On 12 December 2017, before the expiry of the temporary permission, a further application (17/P/02554) was submitted to the Council seeking a temporary permission for another 2 years for 388 parking places for hospital use.

14. The Officer's Report records that the County Highway Authority raised no objection subject to conditions to control the use of the car park and to restrict peak hour movements; and that Highways England raised no objection. The hospital proposed to control the use of the car park by the continuation of a scheme by which permits would only be issued to staff whose normal hours of work meant that they would be less likely to travel to and from the car park during peak hours.

15. However, the Officer's Report suggests that the scheme had not previously been effective, referring to traffic counts undertaken by the hospital and to visits to the appeal site by Council officers which confirmed that there were cars without 'Plot 23' permits.

16. The Report concluded that *"it is clear from the information submitted with the application and through site inspections that the existing car park has not been managed in accordance with the approved Parking Management Plan and that any efforts to prevent peak hour movements have been largely ineffective. There is no evidence to suggest this would be successful in the future and the RSCH have advised that the barrier, when used, also had an adverse impact on the highway network. Without suitable management the development results in significant increased queueing on Gill Avenue, caused by additional vehicles and from pedestrian movements, which would have a severe adverse impact on safe and efficient operation (of) the local highway network and has the potential to cause additional queueing on the strategic highway network to the detriment of highway safety."*

17. There was no attempt at the time by the Council to quantify the effect on the highway network or to justify the suggestion that the use of the appeal site would have a severe adverse impact on safety.

18. Nevertheless the application was refused on 14 March 2018 for the following reason:-

    It has not been demonstrated that the development would not have a severe adverse impact on the safe and efficient operation of the local highway network as a result of additional queuing on Gill Avenue and Egerton Road caused by the additional vehicle movements and disruption to vehicles flows caused by uncontrolled pedestrian crossing. As such the proposal would likely give rise to conditions prejudicial to highway safety and would cause additional inconvenience to the other highway users on the network. Accordingly the development is contrary to Policy G1(2) of the Guildford Local Plan 2003 and the objectives paragraph 32 of the National Planning Policy Framework.

19. The enforcement notice which is the subject of this appeal was issued 2 days later with the reasons for issuing the notice being as cited in the Enforcement Officer's Report.

20. The transport report accompanying the application contained detailed traffic movements on the local network on 24 October 2013 for 08:00 to 09:00 and 16:00 to 17:00. Further traffic counts were made on Gill Avenue in the vicinity of the crossing and Egerton Road (north) on Monday 11 and Sunday 17 September 2017.

21. The numbers in the report show a 2013 westbound flow on Gill Avenue during the 08:00 to 09:00 peak as 1584 which compares with 118 vehicles entering Plot 23 during the same period (7.5%). The eastbound flow on Gill Avenue in the evening peak 17:00 to 18:00 was 1311 with 65 vehicles leaving the car park (5%).

22. For 2017 the westbound flow on Gill Avenue was 1287 with 193 vehicles entering Plot 23 (15%) in the am peak and eastbound 790 with 97 leaving the car park (12%) in the pm peak.

23. The Council undertook a traffic survey on Gill Avenue and Plot 23 on 20 June 2018 and produced a summary note on 24 August. During the peak hour of 07:45 to 08:45, 229 vehicles (with a total of 232 occupants) entered the car park out of 1161 traversing the pedestrian crossing westbound. Those figures are broadly consistent with the appellant's figures for 2017. During that period 318 pedestrians crossed the road southbound and 12 northbound. Cars stopped for pedestrians 123 times with a total stopped time of 496 seconds. The note assumes that all the 232 Plot 23 car occupants used the crossing and therefore represented 73% of pedestrians or a total delay of 362 seconds.

24. Using standard sources, the Council calculate the practical capacity of Gill Avenue westbound as 1110 and that, therefore, the road in the peak hour is at capacity.

25. The Council contend that Plot 23 accounts for 20% of the highway capacity on Gill Avenue and that it is reasonable to suggest that the 362 second delay in the hour represents a further 10% taken up by the effect of cars stopping for pedestrians at the crossing on Gill Avenue when walking from/to the car park.

26. It is the combination of the 229 vehicles per hour travelling on Gill Avenue to Plot 23 with the 232 pedestrians crossing the road from Plot 23 to the hospital which the council consider causes severe delays.

27. The Council, however, produced no evidence of actual queue lengths either in the am or pm peak periods other than annotated screenshots of Google Maps which were not date or time stamped.

28. There is no dispute between the parties that there is a degree of congestion on the local road network during the peak periods. That is not surprising given that the substantial Research Park, the Hospital, the Nuffield Hospital and student accommodation are all accessed via the signalled junction of Egerton Road and Gill Avenue. The Council acknowledge that the junction is the main network constraint.

29. During the unaccompanied site visit in the evening peak period on 2 July cars were observed queueing on Gill Avenue eastbound on the final approach to the

traffic signals but, further to the west, moving slowly at the pedestrian crossing such that pedestrians were able to walk safely between cars. The pedestrians therefore had no perceptible additional effect on the queueing traffic. Cars were seen leaving Plot 23 intermittently and joining the slow-moving traffic leaving the Research Park. Whilst traffic from Plot 23 has priority at the roundabout and may have some delaying effect on traffic from the Research Park, the intermittent nature of vehicles leaving meant that the roundabout was not blocked by cars from Plot 23, which cars merged with the greater number from the Research Park into the slow-moving flow approaching the traffic lights. It was clear that the major constraint was indeed the signalled junction.

30. At 08:00 onwards on 4 July traffic was flowing steadily westbound from the Egerton Road junction towards the crossing where some cars slowed or stopped for pedestrians, traffic behind was delayed slightly but was soon flowing freely towards the roundabout. Whilst crossing pedestrians undoubtedly contributed to delays approaching and leaving Plot 23 and the Research Park, that delay is slight compared with delays introduced directly or indirectly by the signalled junction at Egerton Road, which the Council concede is the main constraint.

31. Except for queueing at the signalled junction at Egerton Road there is, therefore, little substantial evidence of stationary traffic on Gill Avenue in the evening peak. In the morning peak, if traffic on Gill Avenue has to stop to allow pedestrians to cross then it must be relatively freely moving, otherwise pedestrians would simply cross between slowly moving vehicles as in the evening peak.

32. The evidence, therefore, points to the sheer volume of traffic traversing the signalled junction being the primary cause of local congestion, albeit that the situation might be exacerbated by the potential level of peak hour traffic into and out of Plot 23 if entirely unregulated.

33. The hospital provides some 1150 staff parking spaces, 388 of which are on Plot 23 and around 760 on the hospital site. The hospital employs, directly or indirectly, a total of around 5000 staff and hence there is parking for 23% of staff. It is stated that the hospital already encourages other forms of transport and restricts the issue of parking permits to those living further afield or who can show good reason for using a private car (for example having to drop off/pick up children or those involved in community care or off-site clinics during the day). The hospital claims that the level of staff parking provision, which is below the local plan standards, cannot be further reduced without serious detriment to the provision of health services, and hence were Plot 23 not available there would be no option but to provide additional staff parking on site at the expense of visitor parking.

34. Whilst the hospital has been actively pursuing potential alternatives such as use of the Park and Ride facility near the Surrey Sports Centre and a possible future multi-storey car park on the hospital site, attempts to secure any alternative has so far been unfruitful. In the longer term, a new railway station on the northern edge of the hospital site may be of benefit but the hospital contends that public transport is not feasible or safe for those staff travelling late or early.

35. It is reasonable to accept that the provision of adequate staff parking, taking account of practical alternative forms of transport available, is essential for the

efficient operation of the hospital and, despite the suggestion by the Council otherwise, that efficient operation is a material consideration being in the public interest.

36. Although the hospital acknowledges that it would not be forced to cease operation if Plot 23 were not available, it was stressed that it would have no alternative but to use parking spaces currently allocated as visitor parking.

37. As a result, visitors, including outpatients, would be forced to seek alternatives, potentially missing appointments and/or circling the parking area and backing up onto the highway network. This would be detrimental to the efficient operation of the hospital and possibly increasing congestion on the highway network. Total flows across the signalled junction would not be reduced.

38. Although implementation is uncertain there are a number of schemes in the pipeline which would mitigate the local highway congestion, such as the provision of the new railway station and highway improvements. Whilst the uncertainty means that little weight can be afforded to these at present, they are still a material consideration in favour of allowing the appeal.

39. Whilst the enforcement notice refers to severe detriment to highway safety the accident records for the area show no accidents which are attributable to the use of Plot 23.

Balance

40. Although there is plenty of anecdotal evidence from 3rd parties that the use of Plot 23 causes severe delays on the local network, no firm evidence has been provided to that effect or indeed to show that the Plot 23 traffic has a greater effect than traffic entering and leaving the Research Park. Also, if deprived of the use of Plot 23 hospital staff with parking permits issued on the basis of need to use private cars would still drive to the hospital and place greater pressure on the on-site parking which could have unforeseen consequences on both the operation of the hospital and the highway network, to the significant detriment of the health of the population and the wider public interest.

41. However, any adverse effect of the use of Plot 23 on peak hour flows could be mitigated, to the benefit of all parties, if a truly effective scheme of ensuring that only staff whose normal hours of work means that they would arrive and leave outside the core peak hours were permitted to use Plot 23 but not permitted to use the more convenient parking on the hospital site such that staff arriving later, potentially in the peak hour, would be forced to search for an alternative such as Plot 23, defeating the objective. The hospital says that such a permit scheme has been operated but the Council claim that it has been ineffective and suggest an automatic number plate recognition (ANPR) operated barrier would be appropriate with it locked in the peak hours. The imposition of such a system would, however, be disproportionate and unreasonable. Staff arriving later than expected due to circumstances beyond their control, leaving early for valid reasons or working beyond their normal hours could be faced with a locked barrier. Furthermore, given that it is envisaged that the land will be used for an alternative hospital related use in the future, the cost of an ANPR system may be prohibitive compared with a manual permit checking system.

42. The Council also suggested at the hearing the potential for a scheme whereby on-site parking would only be available to staff with specific permits, namely staff who would normally arrive during the peak periods and for the majority of parking on-site being unavailable before a certain hour, thereby forcing early arrivers to use Plot 23.

43. I consider that a scheme, with a degree of flexibility, to direct staff arriving outside peak times to Plot 23 and subsequent traffic, or when Plot 23 is full, to the on-site parking, could be devised and signed. If staff were directed to appropriate and available parking at different times, or if signage indicated that the car park was full, there would be no incentive to drive to Rosalind Franklin Close only to be turned back. General shift patterns are such that staff arriving outside the morning peak would be expected to leave outside the evening peak. It would, however, be unreasonable to try and control when staff leave any particular car park as to do so would, for example, disadvantage staff voluntarily working beyond their contracted hours.

44. The Council have failed to substantiate that the use of Plot 23 is responsible for severe delays and that the use therefore conflicts with Local Plan Policies and the National Planning Policy Framework.

45. However, the local road system is subject to delays inconveniencing all parties. The vehicles using Plot 23 undoubtedly contribute to the congestion simply by being a component of the total volume of traffic. Nevertheless, simply removing 388 parking spaces would not solve any detriment as staff would still travel by private transport and seek to park elsewhere, with potential alternative adverse effects on the local network.

46. The implementation of an appropriate Transport and Parking Plan covering the practical minimisation of private transport to the hospital and control over timing of the use of the available parking such that staff arriving and leaving outside peak hours are, in general, directed to Plot 23 and that on-site parking is available once Plot 23 is full or during the peak hour whichever occurs first, would minimise the impact on the local network and Gill Avenue in particular.

Conclusion on the Ground (a) Appeal

47. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered. However, in the light of the proposed future use of Plot 23 for other hospital related use and to encourage the identification of a more suitable long-term solution in conjunction with the Council, it is appropriate that the permission is temporary for a period of 5 years.

Conditions

48. A condition limiting the use to a temporary period of five years is necessary to provide sufficient time for a suitable long term solution to be identified and implemented.

49. A condition requiring the approval of a parking layout and means of delineation on the ground is necessary to prevent disorganized parking.

50. The council suggested that use of the car park should be controlled by means of a barrier operated by ANPR and closed during peak hours. As reasoned

above, preventing access, and more particularly egress at peak times, in such an absolute manner, would be excessive and a simpler, potentially more effective arrangement could be made. A condition requiring the approval and implementation of a revised travel and parking plan is, therefore necessary.

51. The latter two conditions need to be framed in such a manner as to set out the consequences should a scheme not be approved.

The Ground (f) Appeal

52. Given that the appeal is allowed and temporary permission granted it is not necessary to consider the Ground (f) Appeal.

Andrew Hammond

Inspector

Appendix A – Schedule of Conditions

1) The use hereby permitted shall be for a limited period being the period of five years from the date of this decision.

2) The use hereby permitted shall cease within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

   i) Within 3 months of the date of this decision a parking layout and scheme for its physical delineation shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

   ii) If within 11 months of the date of this decision the local planning authority refuse to approve the layout and scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

   iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

   Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use for the duration of the permission. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3) The use hereby permitted shall cease within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

   i) Within 3 months of the date of this decision a Travel and Parking Plan shall have been submitted for the written approval of the local planning authority and the plan shall include a timetable for its implementation. The Plan shall include reasonable measures to restrict the use of private cars plus means of directing cars to appropriate car parking before and during peak hours.

   ii) If within 11 months of the date of this decision the local planning authority refuse to approve the Plan or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Plan shall have been approved by the Secretary of State.

   iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

   Upon implementation of the approved Travel and Parking Plan specified in this condition, that Travel and Parking Plan shall thereafter remain in use. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Schedule of Conditions

APPEARANCES

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