The Planning Inspectorate

Appeal Decision

Site visit made on 1 October 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2019

Appeal Ref: APP/D0121/W/19/3232479
Land off Wrington Lane, Congresbury BS49 5BQ

- 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 Gladman Developments Ltd against the decision of North Somerset Council.
- The application Ref 18/P/3957/FUL, dated 6 August 2018, was refused by notice dated 4 April 2019.
- The application sought outline planning permission for the erection of up to 50 residential dwellings (including up to 30% affordable housing), structural planting and landscaping, informal public open space, surface water attenuation, vehicular access point from Wrington Lane and associated ancillary works. All matters reserved with the exception of the main site access point, without complying with a condition attached to planning permission Ref 16/P/1521/O, dated 24 March 2017.
- The condition in dispute is No 6 which states that:
"No development of any residential unit on the application site shall take place until the Wrington Lane improvement scheme shown on drawing 1465/10B comprising the construction of a continuous footway, priority road markings and associated carriageway works on Wrington Lane has been constructed in full accordance with the approved drawing 1465/10B."
- The reason given for the condition is:
"In the interests of pedestrian and road safety and in accordance with Policy CS10 of the North Somerset Core Strategy and DM24 of the Sites and Policies Plan Part 1"

Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. Notwithstanding the various references to 'Mr Gladman Developments' in the planning application form and decision notice, there is also reference in the application form to the applicant simply as 'Gladman Developments Ltd'. As this is consistent with the appellants' statement, I have used this in my heading above.

3. Planning application reference 16/P/1521/O granted outline consent for up to 50 dwellings on 24 March 2017, subject to 28 conditions. Only the access was established at that stage, with all other reserved for a subsequent application. Condition 6 is a 'Grampian' style condition that required the highway improvements shown on plan 1465/10B along Wrington Lane to be implemented prior to the residential development proceeding.

4. The appeal proposal seeks to substitute the plan referred to in condition 6 with different plans[1] in order to make changes to the proposed Wrington Lane improvement scheme. These differ from the approved plan 1465/10B in the following regards[2]: (1)The width of highway carriageway through the narrowed section at the eastern end of Wrington Lane is reduced to 2.75m allowing for a 1.4m footway on the northern side of Wrington Lane; (2) The width of highway carriageway through the narrowed section at the western end of Wrington Lane is reduced to 3m from 3.75m; (3) The alignment and position of the pedestrian crossing adjacent to 34 Wrington Lane is altered; (4) The removal of footway on the northern side of Wrington Lane outside 21 to 25 Wrington Lane; and (5) The provision of dropped crossing and tactile paving across Wrington Mead. A replacement condition specifying the plans that reflect the amended design is sought.

Main Issues

5. The main issue is the effect of the proposed variation to the works along Wrington Lane on highway safety with specific regard to the width of the carriageway proposed in the eastern priority give way section.

Reasons

6. Planning Practice Guidance states that applications and appeals made under s73 of the Town and Country Planning Act 1990 should only consider the disputed condition that is the subject of the application and that it is not a complete re-consideration of the original application.

7. Wrington Lane runs from a junction with Kent Road in the west to Wrington Road in the east. To the west of the appeal site between the junction with Cobthorn Way and Kent Road there are two narrow sections of carriageway without a footway where opposing vehicles are unable to pass. The committee report for the outline planning permission[3] for up to 50 houses indicated that the provision of a continuous footway along Wrington Lane from the entrance of the appeal site to the junction with Kent Road was an important consideration in the determination of the scheme, which was reflected in the imposition of condition 6.

8. The Council considered that Plan 1465/10B represented an improvement over the existing arrangement as it detailed a continuous footway within the narrow sections of a sufficient width to cater for the pedestrian flows arising on Wrington Lane from the appeal proposal, residential development off Cobthorn Way[4] and existing residents. When this was combined with the priority give way system through the narrow sections, the limited volumes of traffic along Wrington Lane and low vehicle speeds[5] this would provide sufficient mitigation to provide a safe route to address the impact from the increased number of pedestrians and vehicles along Wrington Lane arising from the appeal proposal.

[1] Referenced 23084_03_020_02 Revision D - Proposed Wrington Lane Footway Scheme, 23084_03_110_01 Revision B – Proposed Footway Cross Sections, 23084_03_020_03 Revision C Proposed Wrington Lane Footway Scheme and 23084_03_020_04 – Proposed Wrington Lane Footway Scheme Pedestrian Visibility.
[2] Summarised from section 4.0 Report Ref 23084/06-19/HS, Appendix 1 of Appellants' statement
[3] Reference 16/P/1521/O
[4] 38 dwellings reference 15/P/0519/O
[5] Pages 15-16 Committee Report 16/P/1521/O

9. Also of relevance is a recent appeal[6] decision concerning a similar proposal at the appeal site where, although the Inspector ultimately dismissed the appeal for other reasons, she considered, amongst other matters, accessibility and highway safety. The Inspector found that the implementation of the footpath would mitigate the effects of the likely increase in vehicular traffic and assist with the accessibility of the appeal site and that such improvements could be appropriately secured by using a Grampian condition.

10. As in the case of the original outline permission and appeal[7], the parties generally agree that the residential development would increase pedestrian and vehicular traffic using the land and therefore, a continuous footpath should be provided from the appeal site to the junction with Kent Road. The appellants are of the view that the proposed revisions to the Wrington Lane footway scheme would fall on highway land and the Council do not dispute this[8]. Furthermore, the appellants consider that the proposals, unlike the approved scheme, would avoid the need for access onto third party land in order to construct them. I am aware that several adjoining residents dispute the ownership and highway status of some of the land. Nevertheless, even if this were the case, consistent with the approach taken in the recent appeal decision, I cannot assume that there is no reasonable prospect of the revised improvements being made, such that in principle, a Grampian condition would be unreasonable.

11. Therefore, it is not a point of disagreement between the parties that such an objective would meet the tests for conditions outlined in paragraph 55 of the National Planning Policy Framework (the Framework) as being necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Essentially the parties disagree as to whether the proposed substitute plans that form the basis of the scheme before me, would suitably achieve a similar objective as approved plan 1465/10B in providing adequate mitigation for the highway safety impacts arising from the appeal proposal.

12. In this regard, the Council have expressly referred to the reduced width of the carriageway to 2.75m in their refusal reason on the decision notice. In common with plan 1465/10B, the proposed substitute plans, amongst other matters, propose a priority give way system and adjacent footway through the two narrower sections of carriageway along Wrington Lane. The scheme before me shows both sections having a narrower carriageway than that shown in plan 1465/10B. However, it is only the eastern section that would be reduced to approximately 2.75m in width[9]. This would be approximately for a length of 35m and would provide a footway of approximately 1.44m width to the northern side. This contrasts with plan 1465/10B which within this section shows a carriageway width of approximately 3.7m and a footway width of approximately 1.2m.

13. Advice[10] in Manual for Streets (MfS) gives typical dimensions for private and commercial vehicles and shows a wheel base of 2.5m as a typical dimension for a lorry but allows 0.25m either side for wing mirrors and therefore, when taken

[6] Reference APP/D0121/W/16/3151600
[7] Paragraph 36 appeal APP/D0121/W/16/3151600
[8] Paragraph 5.1 Council's appeal statement
[9] Drawings 23084_03_020_2 Revision D, 23084_03_110_01 Revision B & 23084_03_020_03 Revision C
[10] Figure 6.18, Page 74 Manual for Streets

in combination the width of a typical larger vehicle at 3m, would be wider than the proposed carriageway width of 2.75m in the narrowed eastern section.

14. Furthermore, the area adjacent to the southern side of this narrowed section of Wrington Lane, comprises private driveway land serving 28-34 Wrington Lane flanked by two sections of hedgerow directly abutting the highway to the front boundaries of No.28 and No.34. In order to avoid contact with the hedgerows, even when driving at relatively low speeds, drivers of larger vehicles would be likely to leave some margin between projecting wing mirrors and the adjacent planting when positioning their vehicle within the carriageway. This is likely to result in larger vehicles of typical dimensions or larger having the wing mirror on the opposite side overhanging the adjacent footway, and in some instances may also result in the wheels of the vehicle mounting the footway.

15. Even taking into account the modest increase[11] in the width of the footway along this section relative to plan 1465/10B, due to the significant reduction in the width of the carriageway available to vehicles, there would be a notably increased risk to pedestrian safety arising from conflict with larger vehicles. The available footway would be confined to one side of the lane and for a sufficiently long length such that pedestrians using the footway would be unlikely to be able to avoid or vacate the area in time to avoid such conflicts.

16. Moreover, because it would be adjacent to a priority give way system, the section of narrowed carriageway would be more intensively used than a conventional arrangement, as it caters for traffic moving in both directions. Drivers entering the section from the west, who have priority, would be aware of traffic from the east waiting for them to vacate the stretch. As such, this makes it less likely that they would wait until pedestrians on the footway in the narrowed stretch had entirely cleared the area before attempting such a manoeuvre. Furthermore, drivers approaching from the east, who would not have priority, are unlikely to be inclined to delay opportunities to proceed through the section due to the presence of pedestrians along the footway.

17. As a result, pedestrians would feel intimidated by the proximity of larger vehicles along this part of the footway, and in the event of overhanging wing mirrors and vehicles mounting the footway, would be put at unacceptable physical risk in an area where they might reasonably anticipate they would be separated from such conflict, making it less likely that they would be prepared to proceed with caution or take evasive action to avoid such risks. This would be particularly the case for more vulnerable pedestrians.

18. I acknowledge that further guidance in MfS states[12] that in lightly-trafficked streets, carriageways may be narrowed over short lengths to a single lane as a traffic-calming feature, and that in particular circumstances this may be reduced to a minimum value of 2.75m, which will still allow for occasional large vehicles. Nevertheless, neither the guidance or diagram[13] suggest that this would be a suitable arrangement directly adjacent to a footway of a width below the recommended minimum of 2m[14]. Nor does the evidence show that the considerable length of approximately 35 metres constitutes a short length. Therefore, given the particular circumstances in this case, the proposed

[11] 0.24m
[12] Paragraph 7.2.3
[13] Figure 7.1
[14] Paragraph 5.3.3 North Somerset Council Highways Development Design Guide, December 2015 & paragraph 6.3.22 Manual for Streets

carriageway width would allow insufficient margin for the likely total width of larger vehicles to pass adjacent pedestrians safely.

19. I further acknowledge that traffic along Wrington Lane would be comparatively low in volume as it would predominantly serve a residential area. However, the Council indicate that the route may attract some drivers seeking a shorter route between Wrington Road and the A370 Bristol Road[15]. Therefore, traffic movements that would occur are likely to include a range of vehicles, including delivery vehicles and refuse vehicles. The dimensions of the latter are presently given as 2.53m width, with wing mirrors of 0.23m in addition[16]. As such, even on an occasional basis, the conflict identified between pedestrians and larger vehicles arising from the proposed continuous footway arrangements would not provide safe and suitable pedestrian access given the likely severity of harm to a pedestrian if such a conflict were to occur.

20. In addition, there would be an increased number of larger vehicles associated with the period of construction for the appeal proposal, which for up to 50 dwellings could be considerable. I have seen little evidence to substantiate the appellants' assertion[17] that construction vehicles would approach the appeal site from the eastern end of Wrington Lane thereby avoiding the 2.75m wide priority give way section. As this is not something that can be easily controlled, I have given this limited weight.

21. My attention has been drawn to the Road Safety Audit reports prepared which did not raise a safety issue with the 2.75m width of the carriageway, as well as the Safety Assessment[18] (SA) comparing the approved footway scheme with the appeal proposal. In identifying the injury accidents that would be most likely to occur the SA refers to vehicle to pedestrian collisions either crossing Wrington Lane at the dedicated crossing point, or walking along the proposed footway to the north but did not specifically mention the risk of larger vehicles mounting or overhanging the footway for the proposed scheme. Nevertheless, I am required to reach my own conclusion based on the proposal, my own observations and the range of evidence before me.

22. The SA concluded that the reduced width of the carriageway would lower the risk of vehicle to cycling collisions (sideswipes) through the eastern narrowed section as there would be insufficient room for drivers to attempt a passing manoeuvre. However, I have had regard to the advice in the Highways Development Design Guide, December 2015 (HDDG) which refers to national advice as well as the advice at Paragraph 7.2.3 of the MfS, which specifically relates to single lane working sections and therefore, is of greater relevance to the proposal before me. This states that, in these circumstances, widths of between 2.75m and 3.25m should be avoided in most cases, since that could result in drivers trying to squeeze past cyclists.

23. Nevertheless, due to the presence of the hedgerows outside of No.28 and No.34 adjacent to the southern side of Wrington Lane, cyclists travelling westwards using the narrowed carriageway section would be likely to position themselves at a reasonable margin from the edge of the hedgerows. Cyclists travelling eastwards would need to take a fairly central carriageway position to

[15] Pargraph 7.8 Council's appeal statement
[16] Paragraph 7.9 Council's appeal statement
[17] Paragraph 4.12 Report Ref. 23084/06-19/HS1, Appendix 1 Appellants' statement
[18] Mewies Engineering Consultants, March 2019 Report Ref: 23084/03-19/6636

ensure they would be seen by vehicles approaching from the east, that would need to give way. As a result, it would be unlikely that vehicles would attempt to pass cyclists within the approximately 35m section. However, it is likely that this would be the case whether the width of the carriageway through the priority give way system were 2.75m or 3.7m.

24. Taking this together with the findings of the SA, I accept that the balance of evidence provided does not show that the revised footway scheme would lead to an unacceptable conflict with cyclists. Nevertheless, any improvements wrought by the proposed amendment in relation to cyclist safety would be marginal and would not justify permitting a proposal that would result in unacceptable conflict between pedestrians and vehicles using the section.

25. Paragraph 7.2.3 of the MfS further advises that the local Fire Safety Officer should be consulted where a carriageway width of less than 3.7m is proposed. Based on the limited evidence provided[19] it is suggested that emergency services have expressed some concern regarding the width of the narrow section to the east of Wrington Lane. On this basis, I am not sufficiently assured that, unlike the approved plan 1465/10B, the proposals would be suitable to provide fire appliance service access that fully meets with the guidance in paragraph 6.7.3 of MfS and 5.19 of the HDDG.

26. I accept that the proposal would introduce a dropped crossing and associated tactile paving across Wrington Mead whereas the approved plan did not. Nevertheless, this would not overcome the harm I have identified in relation to the unacceptable conflict between pedestrians and vehicles.

27. Accordingly, based on the evidence before me, it is not shown that the revised amended Wrington Lane footway scheme would provide a suitable and safe continuous footway along Wrington Lane from the entrance of the appeal site to the junction with Kent Road. Unlike the previously approved plan 1465/10B, it would result in an unacceptable degree of conflict between pedestrians and vehicles due to the restricted width of the eastern priority give way system and as a result, would have an unacceptable impact on highway safety. Therefore, the proposed revised footway scheme would not provide an appropriate level of mitigation to address the transportation impacts of the residential development in order to make it acceptable in planning terms.

28. Consequently, the proposal would conflict with the advice in paragraph 102 of the Framework whereby development proposals should identify and pursue opportunities to promote walking, as the proposed detailed arrangement in this case would not provide an appropriate opportunity to mitigate the adverse transportation effects arising from the residential development due to the increased use of Wrington Lane.

29. On that basis the proposal would conflict with policy CS10 of the North Somerset Council, Core Strategy, January 2017 which, amongst other matters, states that transport schemes should enhance the facilities for pedestrians and improve road and personal safety. In addition, it would conflict with policy DM24 of the North Somerset Council Development Management Policies, Sites and Policies Plan Part 1, July 2016 which supports development where, amongst other matters, it would not prejudice highway safety or inhibit necessary access for emergency vehicles. It further states that development

[19] Page 5 Council Delegated Report 18/P/3957/FUL

which gives rise to a significant detrimental impact on travel patterns, or exacerbates existing transport problems, will only be permitted where acceptable counter measures or mitigation is possible.

Other matters

30. The original application was subject to planning obligations secured by a legal agreement dated 24 March 2017 under section 106 of the Town and Country Planning Act 1990. It included a range of financial contributions in relation to education and various transportation matters. It further provided for open space transfer and works and the provision of affordable housing across the site. From the statements of the main parties, there is no dispute that it is appropriate to secure similar obligations in relation to the appeal proposal. As such, based on the limited evidence before me, the need for these obligations remains and therefore, would continue to satisfy the 3 tests in Regulation 122(2) of the CIL Regulations 2010.

31. If this appeal decision were allowed, a new permission would be created and as such, any such new permission would need to be bound by the terms of the legal agreement. The appellants have submitted a signed and completed deed of agreement and variation dated 17 September 2019 that would suitably bind them to the terms of the original legal agreement dated 24 March 2017. Nevertheless, the evidence does not indicate that these obligations would address the substantive harm that I have identified in relation to the proposed variation to condition 6.

32. Since the grant of outline consent reference 16/P/1521/O the appeal site has been allocated for residential development under policy SA1 of the Sites and Policies Plan, Part 2, Site Allocations Plan, 2006-2026, April 2018. Schedule 1 of that policy refers to the outline consent for up to 50 dwellings but notes amongst the specific site related requirements that traffic management/calming/pedestrian safety measures on Wrington Lane are required. My consideration of this proposal does not affect the status of the outline permission already granted. Furthermore, although the appellants indicate that the appeal proposal would provide an alternative that would avoid the need to access third party land in order to construct the development, it is not part of their case that the approved scheme on drawing ref 1465/10B is not otherwise capable of being delivered.

33. In coming to my decision, I have had regard to the notable number of representations received from local residents including those made by the Congresbury Residents Action Group (CRAG). Some of these raise additional highway concerns in relation to the proposed revised Wrington Lane footway scheme in addition to those considered above, including concerns about the proposed pedestrian crossing point, the western priority give way system and the junction of Wrington Lane and Kent Road. However, these were not concerns referred to by the Council in the refusal reason on the decision notice, delegated report or appeal statement and therefore, I have seen limited evidence in relation to these matters. On the basis of what I have seen, I do not consider that the revised scheme that is the subject of this appeal is so significantly different from the approved arrangements in plan 1465/10B in those regards, such that these factors would be likely to give rise to an unacceptable impact on highway safety.

Conclusion

34. For the reasons given above I conclude that the appeal is dismissed, and the condition retained in its present form.

Helen O'Connor

Inspector