



Appeal Decision

Site visit made on 9 March 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/X1355/W/19/3243330

Adventure Valley, Union Hall Farm, Union Hall Farm Road, Brasside, Durham DH1 5SG

- 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 M Calzini, Adventure Valley against the decision of Durham County Council.
 - The application Ref: DM/19/00600/VOC, dated 15 February 2019, was refused by notice dated 17 June 2019.
 - The application sought planning permission for 'demolition of existing buildings, erection of 100 space childcare nursery, provision of enclosed outdoor play space, and associated infrastructure and landscaping' without complying with a condition attached to planning permission Ref: DM/17/03486/FPA, dated 4 January 2018.
 - The condition in dispute is No 9 which states that: The development hereby approved shall not be brought into use until a footpath along the rural lane from HMP Frankland to the application site has been provided in accordance with precise details to be first submitted to and agreed in writing by the Local Planning Authority.
 - The reason given for the condition is: To promote sustainable modes of travel and in the interests of highway safety in accordance with paragraphs 17 and 32 of the NPPF and policy T1 of the City of Durham Local Plan.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Condition 9 is a pre-commencement condition. I observed on my site visit that the nursery is built and in use and note that the application to remove condition 9 was submitted prior to it being brought into use. I have therefore determined the appeal on its merits, but noting that the approved development has already occurred.

Background and Main Issue

3. The appellant has sought to remove condition 9 of the approved application¹ which requires the provision of a footpath along the rural lane from Her Majesty's Prison Frankland (HMP Frankland) to the application site.
4. The appellant contends that concerns were raised about condition 9 during the determination of the approved application, that highway safety was not

¹ Application Ref: DM/17/03486/FPA.

referenced as an issue during pre-application discussions or the determination of the application and that condition 9 does not meet the tests of being necessary and reasonable in all other respects².

5. The Council considers that the appellant accepted condition 9 as part of the approved application, highlights that both sustainable modes of travel and highway safety need to be provided to make the development sustainable and acceptable and asserts that condition 9 meets all the tests. It is the Council's opinion that the removal of condition 9 would have a significant detrimental impact upon highway safety and would fail to promote sustainable modes of travel.
6. There is no evidence before me which confirms whether or not the appellant accepted condition 9 as part of the approved application. Furthermore, notwithstanding whether or not the issue of highway safety was explicitly referred to by the Council during pre-application discussions or the determination of the application, it is clear that this issue is included as part of the reason for imposing the condition. I have therefore determined the appeal on this basis.
7. Taking the above into account, the main issue is whether or not condition 9, requiring the provision of a footpath along the rural lane from HMP Frankland to the application site, is necessary and reasonable, having regard to i) accessibility and the promotion of sustainable modes of travel; and ii) highway safety.

Reasons

8. The appeal site forms part of the wider Adventure Valley children's entertainment and activity visitor attraction, which is situated just outside the village of Brasside and located within the Durham City Green Belt and Area of High Landscape Value.
9. The route where a footpath is required is an unclassified unnumbered tarmacked road (UNC19.12). It is approximately 340 metres long, narrow with grass verges on either side and unlit. There are three passing places and four bellmouths (which can be used as passing places) along the road to allow vehicles to pass in opposite directions. The 30mph speed limit within the village ends at HMP Frankland.
10. Paragraph 103 of the National Planning Policy Framework (the Framework) confirms that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes, but recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In addition, Paragraphs 108 and 110 of the Framework seek to ensure that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; and that priority should first be given to pedestrians and cycle movements both within the scheme and with neighbouring areas, and second to public transport.

² Paragraph: 55 of the National Planning Policy Framework and Paragraph: 003 Reference ID: 21a-003-20190723 of the Planning Practice Guidance.

11. The appellant contends that given the extension of the bus service to the entrance of Adventure Valley, which commenced in April 2019, and the adoption of a robust Travel Plan (TP) in September 2019, the nursery is accessible by sustainable modes of travel as defined by the Framework³ and offers a genuine choice of transport modes. As such, it is asserted that there is no genuine need for the footpath and its implementation would amount to a substantial over provision which is not reasonable.
12. The extension of the bus service, which serves the peak times for picking up and dropping off children at the nursery, is a material change to the circumstances of the case and makes a significant contribution to accessing the site by alternative sustainable transport modes, particularly given its rural location. However, I am not persuaded that the additional provision of the bus service alone offers a genuine 'choice' of transport modes to the site. With regard to the Framework, in giving priority to pedestrians both within the scheme and with neighbouring areas, it would seem reasonable to expect that the development would provide the opportunity for existing or future users to safely access the site by foot if they desired to do so.
13. The adoption of the TP is also a material change to the circumstances of the case. However, whilst I appreciate that the nursery has not been open for long, no evidence has been provided as to whether any of the measures to enhance the accessibility of the site have been implemented to date, or if any progress has been made towards its identified aims.
14. I note the appellant's comments that the majority of movements to the nursery by staff and parents are already undertaken by sustainable modes of travel, principally car sharing. However, this is mainly due to the fact that a child has to share the journeys to and from the nursery in a car with their parent, as they cannot access it on their own.
15. In the Transport Statement⁴ the appellant refers to a study which provides guideline distances relating to pedestrians and how far they are likely to be prepared to travel by foot to get to facilities or transport nodes⁵, stating that walking trips associated with 'education / escort' generally have a mean walking distance of 1.0 kilometres (km) and an 85th percentile walking distance of 1.6km. It is contended that as all of the residential properties within the surrounding area are located in excess of the mean walking distance and that the majority are at the upper end of the 85th percentile walking distance, the footpath would not be used as the distance would deter parents from walking their children to the nursery.
16. It is reasonable to conclude that the further a facility is from home the less likely it would be that an occupier would walk and rather would choose to use a car or bus. That a particular distance is beyond the identified maximum distance does not mean that it would never be undertaken by a pedestrian; it is just that it would be less likely. Moreover, although many parents who use the nursery may be in employment and have constraints on their time, it does not follow that this would be the case for all users, particularly given the free childcare available from the Government. Taking into account the relatively flat

³ Framework definition of sustainable modes of travel - Any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, low and ultra low emission vehicles, car sharing and public transport.

⁴ Appeal Transport Statement, DA/JNY9467-03 Version B. Dated 16 December 2019.

⁵ How Far do People Walk, presented at the PTRC Transport Practitioners' Meeting London. Dated July 2015.

nature of the route to the nursery from the residential properties to the west, it is possible that existing and future users would be prepared to walk there if they considered the route to be safe.

17. A video-related pedestrian usage survey of the route has been carried out by the appellant to support their view that it has an existing low level of use. The data shows that the highest recorded movements per day was 7, or around 1 person every 3-4 hours and during some days, there were no pedestrians moving along the whole of the route.
18. Nevertheless, the scope of the survey was limited to one week (weekdays, throughout the day). In addition, there is no record of the weather conditions during the survey period and I see it was conducted in late October 2019 when the weather can be poor, potentially deterring pedestrian activity. As a consequence, the survey data is not comprehensive and can only be afforded limited weight in the assessment of how much the route is, or would be, used by pedestrians.
19. Taking the above into account, although the extension of the bus service and adoption of a TP go some way to enhance the accessibility of the site and promote sustainable modes of travel, in my judgement, they do not negate the necessity for a footpath in this location and it is reasonable to require one as part of the development.
20. Policy T1 of the City of Durham Local Plan, May 2004 as amended 2007 (CDLP) states that the Council will not grant planning permission for development that would generate traffic which would be detrimental to highway safety and/or have a significant affect on the amenity of occupiers of neighbouring property. In addition, Paragraphs 108 and 110 of the Framework seek to ensure that safe and suitable access to sites can be achieved for all users and that development should create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles.
21. There is a dispute between the parties as to the additional number of trips to the site that would result from the nursery which has a maximum capacity of 100 children plus staff. The Council consider that it would create approximately 200 trips at the morning peak time to and from the nursery. Whereas the appellant, using the TRICS trip generation database, contends that it would result in 94 person trips between 08.00 and 09.00 which, with assumptions that all trips are undertaken by car and that there would be two occupants per vehicle for arrivals and one occupant per vehicle for departures, would equate to 63 vehicle movements per hour.
22. Even if I were to accept the lower figure offered by the appellant, it is apparent that the nursery would generate a significant increase in traffic and vehicle movements along the route at peak drop off time in the morning during the week. Furthermore, it would also result in an increase in traffic and vehicle movements along the route in the afternoon at pick up time, over and above those movements created by visitors to the park.
23. I accept that the route is straight with good forward visibility which allows road users to stop, wait or move accordingly. However, it would seem likely that the introduction of additional vehicular traffic, which now also includes a single decker bus, onto this narrow and unlit road would give rise to potential conflicts between vehicles and existing and future pedestrian or cyclist users of the

route and would jeopardise highway safety to an unacceptable degree. This potential conflict and adverse impact on highway safety would be more so in the Autumn and Winter months when there is less light.

24. I note the results of the video-related pedestrian usage survey referred to above. However, it is feasible that the existing traffic movements along the route and the fact that there is no footpath there at present, may actually be a disincentive to individuals and families from using it as a pedestrian route. Indeed, when walking along the route on site, I felt uncomfortable remaining on the road when cars passed and moved onto the grass verge.
25. In ensuring that the site is accessible and offers a genuine choice of sustainable transport modes, the route to it needs to be safe for all users. That there have been no recorded incidents to date does not attest to a lack of conflict between highway users or a safe highway network. I consider that the generation of additional traffic by the development necessitates the need for a footpath and its requirement is reasonable in order to minimise the scope for conflicts between pedestrians, cyclists and vehicles.
26. In the context of the above, I find that condition 9 requiring the provision of a footpath along the rural lane from HMP Frankland to the application site is necessary and reasonable, having regard to i) accessibility and the promotion of sustainable modes of travel; and ii) highway safety. Indeed, condition 9 meets all of the six tests set out in Paragraph 55 of the Framework. As such, its removal would conflict with Policy T1 of the CDLP and Paragraphs 103 and 108 of the Framework referred to above. Although not included in the Council's Decision Notice, I also consider that its removal would not comply with Paragraph 110 of the Framework referred to above.

Other Matters

27. The appellant stresses that the Council did not explicitly raise the issue of highway safety during pre-application discussions or within the original delegated report. However, informal advice provided before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application. Furthermore, it is clear that highway safety is included in the reason for the imposition of the condition. Therefore, it does not alter or outweigh my conclusion on the main issue.
28. I am aware that alternative options to the provision of a footpath, including pedestrian refuges and an alternative route, have been suggested by the appellant in an attempt to improve accessibility to the site and mitigate the stated highway safety issues. However, the Highway Authority concluded that they would not be acceptable and there is nothing in the evidence before me that leads me to take a different view on this matter.
29. The appellant asserts that the Section 278 Agreement Officer indicated that the Council would accept a lower standard footpath than adopted standards. Nonetheless, no evidence has been provided in this regard and therefore it is not a material consideration to which I can give any significant weight.
30. I am aware that the Council did not seek a footpath in relation to accessibility and the promotion of sustainable modes of travel or highway safety as part of the Adventure Valley approval in 2009⁶ and that the park operates without any

⁶ Application Ref: 4/08/00728/FPA.

restriction on numbers of visitors. However, that approval pre-dates the Framework, and whilst the requirements under the policy guidance at that time are similar, the Framework represents a material change. Furthermore, I do not have the full details of the Adventure Valley application before me, and in any event, I have determined this appeal on its individual planning merits.

31. I also note that the Council did not request a footpath to the nursery within the Adventure Valley park. However, unlike the unclassified route between HMP Frankland and the entrance to Adventure Valley, the route within the park has speed calming measures located along it which reduce vehicle speeds and mitigate any highway safety issues.
32. It has been brought to my attention that the appellant could have sought to convert a number of agricultural barns in their ownership for use as a childcare nursery without the need for express planning permission and which a condition requiring the provision of a footpath could not be imposed. However, I note that a prior notification application has not previously been applied for. Moreover, even if the appellant is correct in their assessment of the permitted development position, in the absence of any details of such a proposal, there is no evidence that there is any greater than a theoretical possibility that such a development might take place or that it would be a realistic alternative to the existing nursery. As such, I can only attach limited weight to this fallback position.
33. The appellant contends that the provision of a footpath in this location would increase hardstanding along the route and would likely result in the loss of significant trees which would harm the rural landscape setting and be contrary to the purposes of including the land within the Green Belt. However, the principle of the development in this location was considered to be acceptable in the determination of the approved application. Furthermore, no detail of the proposed footpath or any information regarding the trees have been provided. Therefore, I am unable to confirm whether or not it would have a harmful effect on the landscape setting or Green Belt and, as such, I can only give this matter limited weight.
34. The appellant highlights that if a footpath were installed, due to the significant parking problems within the area, it would inevitably be used for parking purposes. During my site visit I noted the measures that have been put in place along parts of Finchale Avenue to stop illegal parking and viewed cars parked on the grass verge of the route to Finchale Priory. However, I did not observe what could be construed as a significant parking issue within the area. Therefore, this matter does not alter or outweigh my conclusion on the main issue.

Conclusion

35. For the reasons given above, I conclude that the appeal should be dismissed.

F Cullen

INSPECTOR