The Planning Inspectorate

Appeal Decision

Site visit made on 24 June 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2020

Appeal Ref: APP/E2734/W/20/3244764
Thornton Manor Farm, Thornton Bridge, Helperby, North Yorkshire YO61 2RH

- 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 Faiz Jogiat of FCFM Group Properties I Ltd against the decision of Harrogate Borough Council.
- The application Ref 18/04050/DVCON, dated 27 September 2018, was refused by notice dated 19 July 2019.
- The application sought planning permission for 'Variation of condition 2, 8, 12, and 14 of planning permission 6.36.6.C.FUL to amend design details and to allow details to be submitted after works commenced' without complying with conditions attached to planning permission Ref 12/03921/DVCON, dated 26 July 2016.
- The conditions in dispute are No's 3, 4, 5 and 6 which state that:
  3) Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months of the date of this permission, the access(es) to the site shall be laid out and constructed in accordance with the following requirements:- (i) the access shall be formed with 10 metre radius kerbs, to give a minimum carriageway width of 6 metres, and that part of the access road extending 20 metres into the site shall be constructed in accordance with Standard Detail number E7d and the Specification of the Local Highway Authority; (ii) any gates, barriers or other means of enclosure shall be erected a minimum distance of 20 metres back from the carriageway of the existing highway and shall open into the site; (iii) provision shall be made to prevent surface water from the site/plot discharging onto the existing or proposed highway in accordance with the approved details and/or Standard Detail number E7d and the Specification of the Local Highway Authority.
  4) Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months of the date of this permission, visibility splays providing clear visibility of 2m x 70 metres by 2m x 160m metres measured down the centre line of the access road and the nearside channel line of the major road shall be provided at the junction of the access road with the county highway at a height of 1m above the level of the adjacent carriageway. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
  5) Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months of the date of this permission, full details of the proposed vehicular access, parking and turning arrangements shall have been submitted to and been approved in writing by the Local Planning Authority in consultation with the Local Highway Authority. Those arrangements shall be constructed in accordance with the specification so approved in accordance with a timescale agreed in writing with the Local Planning Authority in consultation with the Local highway authority. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose

at all times.
6) Within 3 months of the date of this permission, or within a timescale that has been submitted to and agreed in writing with the Local Planning Authority within 3 months of the date of this permission, the vehicular access, parking and turning facilities shall be formed in accordance with the submitted drawing [Reference No. 207 revision A], the access shall be surfaced to the specification of the highway authority unless otherwise agreed in writing with local planning authority. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

- The reasons given for the conditions are:
3) To ensure a satisfactory means of access to the site from the public highway, in the interests of vehicle and pedestrian safety and convenience.
4) In the interests of road safety to provide for drivers of vehicles using the access road to the site and the public highway with a standard of inter-visibility commensurate with the vehicular traffic flows and road conditions.
5) To ensure appropriate on-site vehicle parking facilities with associated access and manoeuvring areas, in the interests of highway safety and the general amenity of the development.
6) To provide for appropriate on-site vehicle parking facilities with associated access and manoeuvring areas, in the interests of highway safety and the general amenity of the development.

Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity, I have taken the name and address in the banner heading above from the appeal form as they are more precise.

3. Since the Council made its decision on the planning application, which is subject to this appeal, on 4 March 2020 the Harrogate District Local Plan 2014-2035 (LP) was adopted. Consequently, the 'saved' policies contained within the Council's Core Strategy 2009 have been superseded. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision. The Council have confirmed in correspondence received that they now rely upon LP Policy TI1 and the appellant has had an opportunity to provide their views on the relevance of this new policy. This appeal has therefore been determined in relation to LP Policy TI1.

4. At the time of my site visit, I saw that the residential development had commenced and was substantially complete, albeit not including the proposed access and parking areas, subject of this appeal. Additionally, whilst only Condition no.4 specifically refers to visibility splays, Condition no's 3, 5 and 6 (the associated conditions) are closely related, given the design changes to the proposed access. Therefore, whilst I have dealt with the appeal on the basis of visibility splays and highway safety, I have had regard to the associated conditions in reaching my decision.

5. Additionally, whilst not specifically cited on the Council's decision notice, the evidence indicates that the design of the proposed traffic calming measures was a factor that led to the Council refusing the appeal scheme. Therefore, I will consider character and appearance as part of my overall assessment. Given, that both main parties are aware of this issue and that it was a contributing factor in the refusal of the application, I will not prejudice any party in taking this matter into consideration in the determination of this appeal.

6. A revised plan[1] has been submitted with the appeal after the decision by the Council was made. I have not taken this into consideration as it has not benefitted from a full consultation exercise undertaken by the Council. Furthermore, the revised plan differs significantly from the refused scheme. In determining this appeal, I have therefore only considered the plans that formed the basis of the Council's refusal of planning permission.

Background and Main Issue

7. Planning permission was originally granted[2] (the original permission) for a residential development in 2009, subject to a number of conditions. This permission was then varied[3] and when approved it amended some design details and wording of some conditions to allow certain details to be submitted after, rather than before works commenced, which was stipulated on the original permission. The scheme under consideration on this appeal, again seeks to vary details on the previous application to relocate the access to the development in conjunction with a Traffic Management Scheme (TMS).

8. Therefore, the main issues of this appeal are:

- the effects of the proposed development on the character and appearance of the area surrounding the appeal site, with particular regard to the TMS; and,

- the effects of the proposed development on highway safety.

Reasons

Character and appearance

9. I note the references in the Officer Report to the Local Highway Authority (LHA) considering that the scheme is overly urban and engineered for a small development. Additionally, the comments[4] from the LHA on the planning application indicated that the proposed scheme was refused on design grounds, with particular regard to the proposed TMS. No Development Plan Policies have been cited by either party on this main issue. I therefore have had regard to the general provisions of the National Planning Policy Framework (the Framework) on this matter, as appropriate.

10. I have examined the proposed scheme, shown in the submitted drawing[5] identifying the proposed new access (Access C) that was submitted during the assessment of the application. Access C has moved in a northerly direction, closer to Unit No 2 than Access B, which was submitted originally[6] with the application.

11. I note that the amount of signage would be notable on the proposed highway improvements drawing[7] and I am not convinced the amount of signage or road markings proposed is either suitable or necessary. Whilst I note this drawing is in a preliminary format, I am still able to assess its overall visual effect on the

[1] 1804402 REV.E September 2019
[2] 09/02583/FUL (6.36.6.C.FUL)
[3] 12/03921/DVCON
[4] North Yorkshire County Council, dated 30 April 2019
[5] 1804403 June 2019
[6] 1804403 REV C September 2018
[7] 1804402 REV.D

surrounding rural area, which I find to be harmful in this instance. The TMS would involve an excessive amount of signage and road markings, resulting in significant visual clutter on this rural road. This would be contrary to the requirements of paragraph 110 of the Framework.

12. I acknowledge the Photographs 1 to 3[8] in the appellant's statement. However, relatively little detail has been provided regarding the particular planning background to these schemes. Without such information a full and detailed comparison between these schemes and the case before me cannot be made, except insofar, as I was able to observe and assess the sites at my visit. In any event, the fact that similar TMS's may exist is not a reason, on its own, to allow otherwise unacceptable schemes. Consequently, given my findings on the details before me, I do not consider that otherwise unacceptable development could be made acceptable through the use of planning conditions in this instance.

13. For these reasons, I therefore conclude that the proposed access and its associated TMS would create significant harm to the character and appearance of the area surrounding the appeal site. Consequently, the proposed development would fail to accord with the design, character and appearance requirements of the Framework.

Highway safety

14. The evidence highlights that each of the access points (A, B and C) would not be able to provide the required visibility splays and my attention has been drawn by the appellant to likely reductions to the required visibility splays that could be applied following the introduction of a TMS. Whilst the section of road through Thornton Bridge (the road) has a speed limit of 60mph, it is common ground between the main parties that the findings in a traffic survey undertaken during the course of one week, commencing on 5 October 2019 demonstrated the speed of traffic on this section of the road is 45.32mph (northbound vehicles) and 33mph (southbound vehicles). Whilst interested parties have disputed these findings, I have not been provided with any alternative data to the contrary.

15. In the Council's submission reference is made towards an achievable distance of 91m being possible, which corresponds with Access B. However, no comments have been provided in respect of Access C. I agree that Access B would not provide the required distance in its northbound visibility splay, even when it is read in conjunction with a TMS. However, I do acknowledge that Access C could potentially provide a visibility splay amounting to some 98 metres, which would create a visibility splay in excess of the stipulated 93 metres. However, this would be subject to an appropriate TMS being installed on the road.

16. I am mindful of physical factors, such as the changing road levels due to the surrounding topography, especially to the south of the site and the proliferation of existing accesses that would be close to Access C. Thus, on the details before me and in light of my findings on the previous main issue, I am not satisfied that the awareness of motorists travelling along the road, particularly in a northbound direction towards the new access would be satisfactory,

[8] Burton Cottages; Helperby Brafferton and Bishop Monkton

resulting in an associated potential likelihood of vehicular conflict, to the detriment of highway safety.

17. I consider the installation of Access C would comprise operational development within the meaning of Section 55 of the Town and Country Planning Act 1990 (the Act). Accordingly, I find paragraphs 109 and 110 of the Framework to be relevant in the context of this appeal. I acknowledge that there are no recorded accidents resulting in any injuries within the last 5 years and although a photograph of an overturned car from November 2018 has been provided, there is limited background information surrounding this accident. In any event, in the absence of a satisfactory TMS to accompany the installation of Access C, I am not persuaded that significant harmful highway safety issues would not arise as a consequence of the proposed development.

18. For these reasons, I therefore conclude that the proposed new access would create significant harm to highway safety. Consequently, the proposed development would fail to accord with the highways safety aims of LP Policy TI1 and the requirements of the Framework, particularly paragraphs 109 and 110.

Other Matter

19. The main and some interested parties refer to various legal agreements attached to the site. However, as the appeal is being dismissed for other reasons, it has not been necessary for me to pursue these matters any further. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

Planning Balance and Conclusion

20. I acknowledge that the development would make some positive contribution to the Council's supply of housing sites and that it would bring some social and economic benefits to the area through the provision and occupation of the newly constructed residential development, which includes 2no. affordable units. However, I find these benefits to be relatively limited and not sufficient to outweigh or alter the harm identified in respect of my conclusions on the main issues.

21. For the reasons outlined above, on balance I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR