



Appeal Decision

Hearing Held on 28 July 2020

Site visit made on 27 July 2020

by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal Ref: APP/K3605/W/19/3235260

Former San Domenico Restaurant, Portsmouth Road, Cobham KT11 1EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Euro Garages Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2017/0524, dated 16 February 2017, was refused by notice dated 15 February 2019.
 - The development proposed is demolition of existing main building and the construction of a new petrol filling station (Sui Generis) with ancillary convenience store (Use Class A1) and food to go outlet (Use Class A5), 4 no pump islands, canopy, underground tanks, revisions to vehicular access, parking and circulation arrangements, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Euro Garages Ltd against Elmbridge Borough Council and Highways England. This application is the subject of a separate Decision.

Procedural Matter

3. The application form did not include the site's postcode. However, it was provided on the Council's decision notice and the appeal form. I have therefore included it for clarity and precision.

Main Issue

4. The main issue is the effect of the proposal on the safety of the A3 in the vicinity of the site.

Reasons

5. The A3, Portsmouth Road, is a 3-lane dual carriageway that forms part of the Strategic Road Network (SRN). The management of the SRN is the responsibility of Highways England as the highway authority. In the vicinity of the appeal site the A3 carries large volumes of fast-moving traffic. As with many other sections of the nation's main roads it has 'evolved' over the years having been incrementally widened to 3 lanes.

6. The appeal site is adjacent to the London bound carriageway a short distance to the north-east of the A3's interchange with the M25 (J10). The existing access is a priority-type junction with short entry and exit slip roads that allows left-in, left-out movements onto the site. The existing access is not of the type that motorists would normally expect to find on a 3-lane dual carriageway. It is the legacy of an historic access rather than something which has been provided to meet today's highway standards. Almost immediately beyond the site exit is the slip road to the grade separated Painshill junction with the A245 that serves the surrounding towns and villages of Surrey including Cobham, Byfleet and Weybridge.
7. The site is currently partially occupied by a small building operating as a Starbucks drive-thru coffee shop. There is also a more substantial building that previously operated as a restaurant. It has been closed since the late 1980s and is now boarded up to prevent vandalism. In 2011 improvements to the access were approved as a Departure to the highway standards that pertained at that time (TD42/95). It was proposed to increase the diverge taper from 45m to 110m. The merge taper of 110m was retained even though this was 20m below the requirements of TD42/95. This Departure was permitted because these changes represented an improvement to the existing access arrangements. However, they were not associated with any proposal for development or a change of use on the site.
8. These improvements were not implemented immediately. However, in 2014 a proposal to use the smaller building on the site as a drive-thru coffee shop was granted planning permission on the basis that it made use of one of the existing buildings on the site and would not generate significantly more traffic than the lawful use of the site as a whole. The Highways Agency (Highways England's predecessor) appears to have accepted that such a proposal could not be resisted given the Certificate of Lawful Use of the site and the historic use of the existing access. Nevertheless, even though a Departure from the TD42/95 standards had previously been approved, the Stage 3 Road Safety Audit (RSA) undertaken in March 2015 highlighted shortcomings with the access. The auditors were particularly concerned about the insufficient acceleration length for vehicles merging onto the A3 given the high speed and volumes of traffic observed at the time. I consider this to be a significant on-going risk for vehicles leaving the site and re-joining the main carriageway. It is also something which I observed first-hand on my site visit.
9. The current proposal is significantly different from the re-use of either of the existing buildings. It seeks to demolish the former restaurant and erect a facility that would provide a wide range of roadside services including a petrol filling station with associated retail and food outlets. A new internal access road would circulate around the new facility with separate accesses from it to serve Starbucks. It is therefore necessary to consider whether or not the existing access could accommodate any change in the number of movements in and out of the site or if it could be amended to do so safely.
10. The Design Manual for Roads and Bridges (DMRB) sets out the requirements and advice relating to works on motorways and all-purpose trunk roads which are the responsibility of Highways England. It states that all works undertaken on all-purpose trunk roads shall comply with its requirements. Any exceptions are subject to formal approval through an application for a Departure to the standards set out within its associated suite of documents. The current

standards were adopted in August 2019, some time after the current application was determined. Nevertheless, they are the standards to which I am required to have regard in reaching my decision in relation to this appeal. The two most relevant sections of the guidance are CD122: *Geometric design of grade-separated junctions* and CD123: *Geometric design of at-grade priority and signal-controlled junctions*. These replaced a number of previous sections of the guidance, including TD42/95 which was the most relevant guidance during the determination of this application and when previous amendments to the site access were agreed.

11. Department for Transport Circular 02/13: *The Strategic Road Network and the Delivery of Sustainable Development* states that local authorities and developers will be required to ensure that their proposals comply in all respects with design standards. It goes on to state that the DMRB sets out details of the Secretary of State's requirements for access, design and audit, with which proposals must conform. I appreciate that the standards set out in DMRB primarily relate to the provision of new junctions and accesses to development. Nevertheless, it follows that their requirements could also be an important or even determining factor when considering amendments to existing arrangements which fall short of those standards.
12. Several requirements are set down in CD122 and CD123 which are relevant to this case. Firstly, the CD123 clearly states that priority junctions shall not be used on all-purpose 3-lane dual carriageways. The existing access is an exception to this advice, so it is unlikely to be an arrangement which should be altered, other than to improve it for the existing use and users. It could even be suggested that it would be better for it to be removed, particularly if there are existing problems with its operation.
13. Secondly, as such junctions are effectively prohibited on 3-lane dual carriageways, no guidance is given on the length of diverge and merge tapers that should be provided. However, on a dual carriageway with a design speed of 120kph (70mph), CD123 states that the merge taper of 110m should be preceded by a 40m nose. I therefore consider it is misleading to suggest that a merge taper of 110m complies with the standards, as that requirement applies to 2 not 3 lane dual carriageways. Although not directly relevant, I note that the requirements for tapers on a rural all-purpose road with a design speed of 120kph set out in CD122, is that the merge length should be 150m plus an 85m nosing. This is more than twice the length of the existing merge lane.
14. Thirdly, CD122 states that the minimum length between a full grade separated junction and an at-grade junction shall be 1km. In this case it is just 90m due to the historic nature of the existing access and its proximity to the Painshill junction. I accept that in 2011 the Highways Agency agreed to a Departure in respect of the merge taper length as this is not something that could be altered, but improvements to the diverge taper were considered beneficial. This decision would have been taken having regard to the use of the access at that time and it was made in the absence of any proposals for development on the site. It therefore cannot be assumed that Highways England would agree to such a Departure again. Neither can it be the starting point for the assessment of improvements which are being promoted to serve something other than the existing development on the site. Furthermore, any Departure to the current standards would have to be justified on its merits at the time.

15. In view of the constraints of the appeal site's location and size it is not possible to increase the length of the merge taper without reducing the gap between it and the exit to the Painshill junction. Since that is already seriously deficient, the most that could possibly be achieved would be amendments of a minor nature within the site. Following protracted iterations between the parties the brief for an RSA was agreed and the RSA was undertaken. Problems, including the lack of separation distance between the junctions, continued to be identified.
16. However, on the assumption that this was a 'given' that could not be altered, other minor revisions to the access arrangements were suggested. The layout discussed at the Hearing is set out on Drawing No: DTP/3701718/SK501 Rev A. This retained the existing distance of 90m between the end of the merge taper at the site exit to the slip road at the Painshill junction and a merge taper of 110m. As this arrangement had been agreed as a Departure in the past, the appellant considered it would be acceptable to serve the proposed development. However, that assumption fails to take into consideration any increase in the number of movements that would be likely to use this sub-standard access.
17. There was broad agreement between the parties that the current proposal would generate additional traffic movements. The range of services on offer to the travelling public would make the proposed development an attractive place for drivers to break a longer journey. These would be passing trips rather than new ones on the network. The figures that were submitted with the original application were updated to take account of trip rates based on most recent data available through TRICS¹. This suggested that morning and evening peak flows would be 135 and 154 respectively and the daily total would be 2116. On Saturday overall flows would be lower, 1471, with the maximum flow of 131 movements likely to be between 11.00-12.00. This would be in addition to traffic visiting Starbucks. Although a small degree of overlap might be anticipated, this is unlikely to be more than 10%.
18. There was an extensive debate at the Hearing about the 'fallback' position as the existing building has a lawful development certificate for an A3 use. It could therefore be brought back into use at any time and this would increase the number of movements through the site and its access. It was suggested that well-known brands such as McDonalds, Burger King, KFC, Greggs, Subway, or a combination of such operators could occupy the building.
19. However, as these operators have a significant proportion of their business as 'take-aways', I was not persuaded that this would comply with an A3 use. In order to provide a fast food drive through, a change of use would be required, so trip rates associated with that type of use are not applicable in this case. While reuse of the existing building may be more than a theoretical possibility, real evidence of that being likely was lacking. Although floorplans of the existing building were provided, no substantive evidence was presented to demonstrate how the existing building could accommodate any of those named brands. Furthermore, the appearance, design, layout and current state of repair of the building suggests that a significant investment in it would be required to meet the specific needs of any of these named brands.

¹ TRICS – Trip Rate Information Computer System

20. On this basis, even if I was to accept that the building could be brought back into use as an A3 restaurant, I do not accept that it would generate the number of traffic movements suggested by the appellant's transport consultant. On the contrary, I am of the view that the proposal would significantly increase the number of movements through the access over and above any lawful use of the existing building, even if the increase was not as great as might be suggested from the most recent TRICS based analysis set out in paragraph 17. This in turn would increase the number of weaving manoeuvres on and off the A3 with potentially serious consequences for the safety of this part of the SRN.
21. This section of the A3 is already experiencing a significant number of crashes involving personal injuries. There have been 15 such incidents between January 2014 and December 2018. Some of these have been directly attributable to the access to the site, others have been associated with the weaving of traffic as vehicles change lanes to enter and leave the main carriageway.
22. In this context, I consider that the introduction of even a small number of additional traffic movements associated with the development would be likely to increase the risk of conflict and collisions on the A3 near the access to the proposed development. In particular, the inadequacy of the merge taper means that traffic at the site exit waits until there is a gap in the main flow before merging onto the A3, rather than gaining speed along the taper. This was readily apparent from the observations at my site visit. Furthermore, as vehicles attempt to join the A3 safely, others are changing lanes in order to exit at the Painshill junction. I consider this to be totally unacceptable on this busy and fast section of the SRN. On this basis, I do not see that there would be any justification for Highways England to agree to a Departure to the standards set out in the DMRB.
23. For all these reasons, I conclude that the proposal would have an unacceptable effect on the safety of users of the A3 in the vicinity of the site, in conflict with Paragraphs 108(b) and 109 of the National Planning Policy Framework and Policy DM7 of the Elmbridge Development Management Plan (2015). Both national and local planning policies require access to and from the highway to be safe for all users. The proposal would also fail to comply with the Secretary of State for Transport's requirements set out in the DMRB to ensure the safe and efficient operation of the SRN.
24. The appeal is therefore dismissed.

Sheila Holden

INSPECTOR

APPEARANCES

FOR THE APPELLANT

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Tom Jeremiah	Euro Garages
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