
Appeal Decision

Hearing Held on 7 October 2020

Site visit made on 6 October 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2020

Appeal Ref: APP/T2405/W/20/3248167

162 Hinckley Road, Leicester Forest East LE3 3JT

- 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 Mostyn GHT against the decision of Blaby District Council.
 - The application Ref 19/1076/FUL, dated 2 August 2019, was refused by notice dated 27 November 2019.
 - The development proposed is described as 'demolition of existing bungalow and new meeting hall (use Class D1) with access, car parking and landscaping.'
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Decision

1. The appeal is dismissed.

Main Issues

2. There are two main issues. These are the effect of the proposed development on a) highway safety with specific regard to the free flow of traffic; and b) the living conditions of existing neighbouring occupiers.

Reasons

Highway Safety

3. The appeal site comprises a detached bungalow on a roughly rectangular plot set back from and facing the south side of the A47 Hinckley Road. The bungalow has an existing vehicular access to the west of the dwelling which connects with Hinckley Road and serves a car port to its side elevation. At the time of writing, an extant planning permission exists at the appeal site for the erection of two six bedroom dwellings. The appellant confirmed at the hearing that pre commencement conditions had been discharged and should the appeal not succeed, it would be built out.
4. The area of Hinckley Road to the north of the appeal site is a two lane single carriageway with a dedicated turn lane for westbound vehicles turning right onto Kirby Lane, in the direction of Kirby Muxlowe. Hinckley Road and Kirby Lane meet as a three way traffic light controlled junction. A Tesco express store has recently opened at No 164 Hinckley Road and its access has a dedicated right turn lane located after the traffic signal for eastbound traffic to enter its forecourt car park. The A47 is an arterial route, linking Leicester with Hinckley and Nuneaton. The speed limit in the vicinity of the appeal site is 40mph.

5. The appeal scheme seeks the demolition of the bungalow and the erection of a meeting hall as a place of worship. The scheme would include a 19 space car park. There would be a new point of access to the site, to the opposite side of the existing frontage. Each meeting would host up to 50 visitors, which is about the capacity of the hall. There would be three meetings per week. Two on a Sunday at 06:00 and 15:00 respectively and the other on a Monday evening. The group for whom the hall is proposed require that the 06:00 Sunday meeting is mandatory on religious grounds. The others, whilst likely to be at the above times, may be subject to change.
6. The weekly number of trips associated with the extant two dwellings would be marginally more than those associated with the proposed hall over the same period. I have no reason to doubt this finding and indeed the Council's Highways Advisor agreed at the hearing that the appellant's estimation of weekly trips from a dwelling of the size proposed would not be unrealistic. Be this as it may, the trips associated with two dwellings would be spread out over seven days, the proposed hall would have trips fitted into three separate instances over two. It is the focussed nature of these trips that gives me cause for concern.
7. There seemed little disagreement between the main parties that the A47 is a busy road. At my site visit, which was mid morning on a weekday, I observed an almost constant and steady stream of traffic in both directions through the junction. When the westbound lane signal was on red, there was a near constant queue of traffic waiting across the entire width of the appeal site's frontage for the duration of the phase. This queue was two lanes wide when including vehicles wanting to turn right onto Kirby Lane. It seems logical to say that there may be less traffic around at the time of the early meeting on the Sunday but arguably not so for the other two or indeed times when these other meetings may be changed.
8. The appellant explained that attendees were generally punctual. Taking into account the capacity of the hall and allowing for car sharing, there could be in the region of 16-17 vehicles converging on the site over a short and intense period of time immediately before a given meeting. Some vehicles are likely to be eastbound and thus need to turn across two westbound lanes to access the appeal site. By virtue of waiting for the westbound lanes to clear when they are on a red signal, there is a strong potential for a queue to form which would block following vehicles from exiting the junction either from Kirby Muxlowe or Hinckley Road. This can build up vehicles entering the junction from these directions and have a knock on effect in either crowding the junction itself or causing delays in longer queues further back. This has the capability to impede the flow of traffic through the junction.
9. This would be an exacerbating factor to the strain that has already been placed on the junction following the opening of the Tesco express store. This does have a dedicated right turn lane for eastbound traffic as I have said but it is short and could accommodate perhaps 1 to 1 ½ cars at any one time. Consequently, multiple visitors to the store at any one time already has the capability to back up eastbound traffic on Hinckley Road, through the junction.
10. The problems associated with eastbound vehicles waiting to turn right into the appeal site would not necessarily be limited to when the westbound lights are on red. Hinckley Road carries traffic at 40mph which isn't slow by any means.

- I observed vehicles travelling at speed through the junction in a westbound direction at my site visit. This would create limited opportunities to cross the lanes into the site and therefore leading to similar problems I have identified.
11. The disruption arising out of queueing may be over a contextually short period of time, and limited to certain times of the week but taking into account the general busyness of the junction most of the time, I do not feel this would be sufficient to say that the impact would be acceptable. Taking into account existing factors at the junction.
 12. To a lesser extent, the junction's operation could be further affected by vehicles exiting the appeal site after a meeting. A number of vehicles waiting to exit at the same time has the potential to disrupt the regular movement and thus clearance of the two queues waiting at a red signal westbound. This, as well as any keep clear markings that are proposed, can push queues further east along Hinckley Road.
 13. Not all vehicles would travel from the west and I have acknowledged this in my findings. Some may walk. However, it seems to me that estimating at least a 50/50 split of vehicles travelling from either direction, this would still yield sufficiently noticeable an increase in the use of the junction, taking into account other pressures already loaded onto it courtesy of the Tesco express store.
 14. My earlier findings temporarily aside, keep clear markings suggested by the appellant for the width of the new access may go some way to reducing the effect of the more intensive use of the appeal site's access. However, without a traffic regulation order in place what I have seen would not be enforceable. An order, or any yellow box considered as an alternative would likely be subject to a period of consultation and not knowing what the outcome of that would be at the time I make this decision I cannot come to a conclusive view as to its acceptability or effectiveness.
 15. The appeal scheme would remove an existing access for the bungalow which is closest to the junction and create a wider one further away. Again, this would be beneficial but as I observed on my site visit, queues at the lights for westbound traffic most times appear to block the entire frontage of the appeal site and thus not remove the potential for the aforementioned operational problems to thus make the proposed development acceptable.
 16. Taking all of the above into account, it seems to me that the appeal scheme would have an adverse effect on the safe use of the highway by unacceptably impeding the free flow of traffic through an already busy arterial road junction. This would accordingly render the proposed development in conflict with paragraphs 108 and 109 of the Framework¹ which explain that it should be ensured that a safe and suitable access to a site can be achieved for all users and development should be refused on highways grounds if, amongst other things, there would be an unacceptable impact on highway safety.

Living Conditions

17. In order to focus attention to the proverbial nub of the matter in regard to this main issue, it arose from discussion at the hearing that the mainstay of the Council's concerns in respect of the effect of the proposed development on the

¹ The National Planning Policy Framework 2019

living conditions of existing neighbouring occupiers stemmed from the proposed hall's holding of the 06:00 meeting on a Sunday. Whilst accepting that internal use of the hall would unlikely give rise to a problem having regard to the nature of the meetings themselves, the Council were most concerned about the noise disturbance that would be created out of the comings and goings early on a Sunday morning. The appeal site is bounded on two of its sides by private residential uses. These are Number 160 Hinckley Road and plots that front onto Regents Walk to the south.

18. The proposed development would, as I have explained above, involve a not insignificant number of vehicles converging on the appeal site in a short space of time. I appreciate the appellant's assertions that as a community minded group of respectful people, attendees would do their best to make sure that they were quiet in entering and leaving the hall and whilst this would to some extent help with the effect of any noise disturbance, there would not be much they could do about the operation of car engines, the opening and closing of car doors, talking outdoors or verbalising instructions to children, amongst other things. As well as the arguably unavoidable possibility of larger groups congregating outside of the hall after meetings. The type and level of the noise disturbance that would come from these factors might not be great in themselves, or indeed in isolation as a single example but would be when considering the number of attendees arriving and departing the site within a short period of time, coupled with the early time of day.
19. Some measures would help reduce the effect of these issues in the shape of boundary fencing, landscaping and signed advice to keep noise levels down but ultimately one must question whether the appeal site, given how close it abuts other neighbouring gardens, is the most appropriate place for the proposed development and thus such solutions should need to be considered in the first instance.
20. There is some context to consider. That being noise emanating from Hinckley Road. It is reasonable to say that the area is therefore far from tranquil. However, and in regard to the 06:00 meeting specifically, I would imagine the background noise from the road to be reduced, to the point that it would make that arising from the comings and goings at the appeal site to be more noticeable. Ultimately, 06:00 on a weekend morning is a time when the majority of residents in their homes would expect a higher degree of peace and quiet.
21. A not insignificant gathering of people and vehicles concentrated in a relatively small space so close to the boundaries of other dwellings would, for the above reasons, give rise to an adverse effect the living conditions of their occupiers. The appeal scheme would therefore be contrary to Policy DM1 of the Local Plan which seeks, amongst other things, to ensure that development proposals provide a satisfactory relationship with nearby uses that would not be significantly detrimental to the amenities enjoyed by the existing or new occupiers.

Other Matters

22. I have considered the use of conditions to limit the number of meetings at the hall and also their times. Given I have found that harm would arise from the holding of a meeting at 06:00 on a Sunday in terms of the living conditions of neighbours and that this was explained by the appellant to be religiously

important, I do not see the merit in applying a condition to that effect since it would not make the proposed development acceptable. Such a restriction may go some way to alleviating the issue with access and the free flow of traffic but since two of the meetings may be subject to change, any tight restrictions would remove the ability for the appellant to make such changes and be flexible. There is therefore an element of fairness and thus reasonableness to consider here in determining whether conditions would be appropriate and justified.

23. The appellant suggests in their evidence that the highways impacts would not be severe. Even if this were not the case, paragraph 109 of the Framework does not explicitly say they have to be to make a given development unacceptable. It states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or (emphasis added) the residual cumulative impacts on the road network would be severe.
24. In terms of my assessment of the appeal scheme I have taken what is arguably a 'worst case scenario', referring both to the upper limit of possible attendees at any one time as well as the number of vehicles associated therewith. Whilst in reality this number may be lower, a condition restricting such would not to my mind be reasonable on the basis of the size of the car park, the capacity of the hall and the practices intended to take place there. I also feel such a condition would fail a test of enforceability given how practical it would be to ensure the conditioned limit on visitors was not breached.
25. The appeal scheme would provide a facility of benefit to a sector of the local community for which there is evidently a demand. Whilst I would attach some weight to this it would be insufficient a matter on its own to outweigh what would be multiple planning harms arising. Harms which would result in conflict with the development plan and the Framework.
26. The appellant also made it clear at the hearing that if the appeal scheme were not approved then the extant planning permission for the two dwellings would be implemented. Firstly, even allowing the appeal would not remove the extant planning permission. It could still be implemented regardless of the outcome of the appeal. Secondly, it is an extant planning permission that has been through the planning system and found to be acceptable in all other respects for what it is and where it is. I do not have any control over it. Finally, and even though they may be higher in overall number, it strikes me that the type and nature of trips associated with two dwellings, being more ad hoc and spread out as they would be, would have a noticeably lesser effect on the operation of the junction than the proposed development which would be more focussed and intensive as I have said. It also seems clear to me that the operation of a private residential use, and all that it entails, would be more compatible with the living conditions of existing neighbours than the proposed development.
27. A number of examples of meeting halls have been provided in the appellant's evidence. Most appear to be in close proximity to private dwellings. Be this as it may, I was not party to the circumstances of the planning permissions that granted them and as such, even if they were acceptable in terms of the effect they may have on the living conditions of neighbours, I am unsure as to what other issues may have been relevant. I cannot therefore be certain that they

are sufficiently similar to the appeal scheme such that my conclusions would change.

Conclusion

28. For the reasons set out above, the appeal is dismissed.

John Morrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Andrew Beard	AB Planning
Mr Andrew Dennison	Highway Access Solutions
Mr Pete Fear	Appellant
Mr Tim Dallow	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Charles Ebdon	Blaby District Council
Mr David Hunt	Leicestershire County Council