



Appeal Decision

Site visit made on 25 August 2020

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st January 2021

Appeal Ref: APP/Q0505/W/20/3251810

Cambridge Retail Park, Newmarket Road, Cambridge CB5 8WR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Standard Life Assurance Limited against Cambridge City Council.
 - The application Ref 19/1500/S73 is dated 28 October 2019.
 - The application sought planning permission for the demolition of existing buildings and erection of non food retail units and garden centre, Drive thru restaurant with associated servicing, Car Parking, Landscaping, new access and relocation of existing amenity car park (reserved matters – to original application C/99/1121/OP) without complying with a condition attached to planning permission Ref C/02/0136/RM, dated 2 July 2002.
 - The condition in dispute is No 5 which states: *prior to development commencing, a detailed scheme to preclude any motorised vehicle (other than authorised buses) from being able to enter the site from one public highway and exit to another, shall be agreed in writing with the local planning authority. The agreed scheme shall be implemented before any retail outlet the subject of this permission and the outline planning permission C/99/1121/OP is open for trade with the public and retained thereafter.*
 - The reason given for the condition is: *to preclude the site being used by motor cars or other motorised vehicles as an alternative route between Newmarket Road and Henley Road and Coldham's Lane and to ensure that the traffic impact of the development is acceptable.*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of non food retail units and garden centre, Drive thru restaurant with associated servicing, Car Parking, Landscaping, new access and relocation of existing amenity car park (reserved matters – to original application C/99/1121/OP) at Cambridge Retail Park, Newmarket Road, Cambridge CB5 8WR in accordance with application ref 19/1500/S73 without compliance with condition number 5 previously imposed on planning permission Ref C/02/0136/RM, dated 2 July 2002 and subject to the condition in the attached Schedule.

Background

2. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the

application, as jurisdiction over that was taken away when the appeal was lodged. The Council have submitted an appeal statement which gives the reasons why planning permission would have been refused had the Council been empowered to do so. The appellant has also submitted an appeal statement. I have drawn on this, together with other evidence before me, to inform the main issue in this appeal.

3. It appears from the evidence that the disputed condition number 5 (the condition) was initially satisfied by the provision of a rising bollard on the private road access within the retail park, which formed part of an approved scheme. However, the bollard was removed in 2019, and an application was then submitted to remove the condition. Therefore, the condition has been breached as the agreed scheme has not been retained as required by the condition. Consequently, my decision considers the planning merits of allowing the development without compliance with the condition.
4. I have been provided with a copy of an approved plan¹ which shows details of a bollard and two zebra crossings on the private access road within the retail park which runs between Newmarket Road and Coldhams Lane. However, this is not reflected by the circumstances that now exist on the ground. As well as the removed bollard, two additional raised zebra crossing points along with tactile paving and a speed bump, have been installed. This is infrastructure with a degree of permanence, and there is no obvious reason why these features would be removed. Furthermore, the Council do not raise any objection to the additional infrastructure that has been installed. Consequently, I have determined the appeal based on the site as it now exists.

Main Issue

5. The main issue is whether the condition is necessary having regard to the effect of the development on the safety of pedestrians, cyclists and drivers.

Reasons

6. The appeal site consists of a retail park which can be accessed from both Coldhams Lane and Newmarket Road via a private road which leads to the car parking areas associated with the retail park. The bollard, when in situ, prevented cars from using the private road as a through route between these public roads.
7. The Council asserts that the removal of the bollard approved under the condition encourages drivers to use the retail park as a cut through between Coldhams Lane and Newmarket Road, thus allowing drivers to divert local traffic congestion. However, the appellant submitted a Transport Statement with the planning application which included ANPR² survey data demonstrating that approximately 6% of vehicles entering via Coldhams Lane or Newmarket Road passed through the car park in less than 5 minutes³.
8. I appreciate that the ANPR survey data provided by the appellant is only a snapshot in time, but the initial survey was corroborated by a second survey carried out at a later date. Consequently, I am satisfied that the survey data is robust and demonstrates that the proportion of vehicles using the retail park as

¹ Site Layout Plan Drawing Ref – 991084 D 003 H

² Automatic Number Plate Recognition

³ Survey undertaken in over 2 x 24 hour periods in September 2019 and December 2019

an apparent short cut is minimal. Moreover, a number of these vehicles may have been using the route with the intention of dropping off or picking up staff or customers. Overall, the Council does not dispute the figures provided, and I also find it significant that no objections were raised by the Highway Authority in relation to the impact of the removed bollard on the surrounding highway network.

9. On my site visit I was able to see the additional traffic calming measures that have been installed following the removal of the bollard, such that drivers travelling along the private access road are faced with a number of influences which, in my view, are likely to reduce vehicle speeds. Firstly, the carriageway width available for cars in front of the retail units is relatively narrow due to the presence of clearly marked cycle lanes on either side. Furthermore, there are pedestrian crossings, raised plateaus and a speed bump, along with speed limit signs, all of which serve as visual cues that the private road lies in a heavily pedestrianised retail park environment. There is also a mini roundabout which all drivers using the retail park as a through route must negotiate. Even outside of opening hours when pedestrian numbers are likely to be limited, all the aforementioned traffic calming measures are intended to restrain the movement of motor vehicles through the site.
10. The Council carried out speed surveys on a single day in February 2020 which showed that most vehicles averaged 10-12 mph⁴ through the site. Whilst I appreciate that the average speeds recorded are in excess of the retail park's speed limit of 5 mph, and the speed limit within the retail park is not enforceable by law as it does not form part of the public highway, there is nothing before me which explains the reasons why the recorded average speed of 12 mph in itself is unsafe for pedestrians and cyclists. Indeed, the recorded average speeds suggest that drivers generally exercise caution when travelling on the private road, in line with the observations I made on my site visit.
11. Whilst I accept that a range of factors influence driver behaviour, including the propensity of drivers using the retail park as a short cut to travel at speed, the immediate environs of the private road including the traffic calming measures in place, are not conducive to excessive speeds, and the evidence does not suggest that the route is an attractive and well used alternative to the main roads. Furthermore, there is no evidence before me to suggest that accidents within the retail park are prevalent as a result of the removed bollard.
12. I have also considered anecdotal evidence from third parties which suggests that pedestrian and cyclist safety is compromised due to the increase in the number of vehicles travelling through the retail park. However, several priority pedestrian crossing points exist which form a network within the retail park linking the car park to the retail units and to the wider road network. Cycle lanes are also in place on each side of the private road. I am satisfied that priority is given to pedestrians and cyclists and that safe and suitable access is in place for all users.
13. Suggestions that GPS systems within vehicles may recognise the private road through the retail park as a shortcut, leading to an increase in collisions, is unsubstantiated. In any event, it is unclear to me whether GPS systems would direct vehicles along private roads, and the Council have not quantified the time taken for vehicles routing through the retail park, in comparison with use

⁴ 85th percentile speed

of the surrounding public roads, so it is not clear whether the retail park route is a shorter and/or quicker alternative. Equally, there is no evidence to suggest that allowing this appeal would legitimise the route leading to unacceptable highway safety impacts. The Highway Authority for the area did not raise these issues as specific concerns.

14. The appellant has submitted a plan showing a raised table which they would be willing to install in the same location as the removed bollard. However, I am not persuaded that this additional feature is necessary given that I find no unacceptable conflict between pedestrians, cyclists, and vehicles in respect of the development that has been implemented.
15. In conclusion therefore, I find that the condition is not necessary, and the development ensures safe and suitable access for all users. The development complies with Policies 56, 80, and 81 of the Cambridge Local Plan 2018 and paragraphs 108 and 110 of the National Planning Policy Framework (the Framework) which require, amongst other matters, that development prioritises networks of pedestrian and cycle movement and creates streets that do not allow vehicular traffic to dominate and ensures that conflicts between pedestrians, cyclists and vehicles is reduced to create places that are safe.

Other Matters

16. I am aware that this appeal relates to an application to remove a condition from an approval of reserved matters, which itself was granted by an outline planning permission (C/99/1121/OP). Whilst reference is made to a similar condition attached to the outline planning permission, I have not been provided with a copy of the outline planning permission or details relating to it. In any event, the application form and appeal form submitted with this appeal makes it clear that the proposal before me relates only to the removal of condition 5 of the reserved matters approval, and I have dealt with the appeal on this basis.
17. The removal of the bollard has not significantly increased vehicular movements within the retail park; thus, the removal of the condition would not lead to significant air quality impacts for the area. There are no objections from the Council relating to the impact on local air quality.
18. The specific reasons why the bollard has been removed are immaterial to my decision. I have assessed this appeal based on the impacts of the development in the absence of the bollard, and in the absence of the condition, and find it acceptable for the reasons given.

Conditions

19. The Planning Practice Guidance (PPG) advises that regardless of the outcome of a section 73 appeal, the conditions on the original permission still have effect. It goes on to say that the grant of a new permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect.
20. With this in mind, I have considered the conditions on the reserved matters permission. In the absence of any evidence to the contrary, I find it necessary to impose the same condition attached to the reserved matters which limits deliveries in relation to units 11 and 12, accessed off Henley Road, in the interests of the amenity of the area.

21. For the reasons set out in this decision, condition 5 is not necessary. Several conditions which specifically relate to construction works, materials or planting are no longer relevant given the retail park has been operating for some time.
22. The Council suggests that an additional condition should be imposed requiring the submission of a Transport Review Statement after a period of 5 years so that vehicular movements can be monitored and, if excessive, a bollard or alternative traffic management measures be introduced. However, the Council have not submitted substantive evidence to show that the number of vehicles using the retail park is likely to increase significantly over time, nor that any such increase would necessitate additional measures. Moreover, there is nothing before me in the evidence to suggest that a bus service is likely to be reintroduced any time soon. Therefore, having regard to paragraph 55 of the Framework, such a condition would fail to meet the tests of necessity and reasonableness.

Conclusion

23. For the reasons set out above I conclude that the appeal is allowed.

Matthew Woodward

INSPECTOR

Schedule of Conditions

1. No deliveries shall be made to, or vehicle movements allowed to depart from, units 11 and 12, which are accessed off Henley Road, before 0700 hours or after 1100 hours, on Mondays to Saturdays and not at all on Sundays or Bank Holidays.

End of Schedule