



Appeal Decision

Site visit made on 22 February 2021

by Alison Partington BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2021

Appeal Ref: APP/W4223/W/20/3263446

K S Oils Ltd, Green Lane, Failsworth, Manchester M35 0PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 for a revised site layout including reopening of existing access to form additional site entrance and including new off site parking for which a previous planning permission was granted for a limited period.
- The appeal is made Mr Kevin Smith (K S Oils Ltd) against the decision of Oldham Metropolitan Borough Council.
- The application Ref PA/343659/19 is dated 10 July 2019.
- The application sought planning permission for a revised site layout including reopening of existing access to form additional site entrance and including new off site parking granted planning permission for a limited period Ref PA/340564/17, dated 22 December 2017.
- The permission is subject to a condition requiring that the layout must be discontinued and the land returned to its authorised condition on or before 12 months after the implementation of the access and parking layout shown on the case drawings.
- The reason given for the condition is: "There is not enough evidence available at this stage to assess the impact of the development in terms of highways safety and this permission for a limited period will allow the Council to reassess the development in light of experience of the access and parking layout".

Decision

1. The appeal is allowed and planning permission is granted for a revised site layout including reopening of existing access to form additional site entrance and including new off site parking at K S Oils Ltd, Green Lane, Failsworth, M35 0PP in accordance with the terms of the application Ref PA/343659/19 dated 10 July 2019 without compliance with condition number 2 previously imposed on planning permission Ref PA/340564/17, dated 22 December 2017, and subject to the following conditions:
 - 1) The approved scheme shall be carried out in accordance with the following plans and specifications:
Drawing Number: M3689.PL.10, Revision: A
Drawing Number: M3689.PL.11
Drawing Number: J320 Access Fig 1
Drawing Number: J320 Access Fig 2
 - 2) No vehicles shall at any time access or leave the site in reverse gear. The western access shall be used as an access only and the eastern access should be used as an egress only, as shown on the approved drawing number: M3689.PL.10, Revision A.

- 3) No storage of tanks or other equipment, or the parking of vehicles other than tankers or other delivery vehicles, shall take place within the vehicle manoeuvring area indicated on the approved drawing number: M3689.PL.10, Revision: A, at any time.

Applications for costs

2. An application for costs was made by Mr Kevin Smith (K S Oils Ltd) against Oldham Metropolitan Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Permission was granted in January 2014 for the erection of storage tanks and associated works to provide a waste oil recycling facility¹ at the appeal site. This had a single access/egress point in the north eastern corner of the site with vehicles turning within the site before leaving. In December 2017 permission was granted for a revised site layout that included reopening an access at the north-western corner of the site. The new access was to be used for vehicles to enter the site with the original access being used solely for vehicles exiting it. This was subject to a condition limiting the time the new layout and access could be used so that its impact on highway safety could be assessed. The appeal seeks to remove this condition to enable the continued use of the revised layout and additional access.
4. Therefore, the main issue in the appeal is whether the condition is reasonable and necessary in the interests of highway safety.

Reasons

5. The appeal site is located in an established small industrial area. Green Lane provides for 2-way traffic, but in the immediate vicinity of the industrial area only has an intermittent footpath. Although a through road, a width restriction to the east means that it is not a through road for HGVs. Therefore, all HGVs accessing the site or any of the other commercial uses nearby must access and leave the area to the west.
6. When permission was granted for the site to be used for its current use it had a single point of access and egress, with vehicles having to turn within the site so that they could enter and exit in forward gear. This original permission had no restrictions on the size of vehicles that could access the site. The agreed access drawings show that on exiting, to turn left, a rigid HGV would have to overrun the centre line of the road. Such a manoeuvre was therefore considered acceptable and safe by the Council.
7. The revised layout provides a new access which is used solely as an entrance to the site with the original access being used for vehicles to exit the site. The new access is on a bend in the road but vehicles turning right into the site have good visibility of traffic approaching in the other direction. Whilst this access is gated, the appellant has stated that all vehicles stop first at another site belonging to the appellant, which is a short distance to the south, to be checked in. This process means that the gate can be opened before they arrive at the appeal site, so they do not have to wait on the highway for this to be

¹ Planning Application Ref PA/334588/13

- done. As such, I am satisfied that the new access provides a safe access point to the site.
8. The original access is used for vehicles exiting the site. In order to turn left the tankers and rigid HGVs that serve the site have to overrun the centre line of the road. However, as highlighted above, such a manoeuvre was previously considered acceptable and safe by the Council.
 9. At my site visit I was able to witness both a tanker and a rigid HGV complete this move. This confirmed that such vehicles are able to complete this in one manoeuvre and that it can be achieved without overhanging the carriageway. However, even if they did overhang the carriageway there is no pavement on that side of the road, just vegetation, and so it would not give rise to conflict with pedestrians.
 10. Occasionally other vehicles that approach the site whilst a vehicle is turning out of the site may have to wait whilst the manoeuvre is completed. However, any such wait would be momentary and the volume of traffic on the road is such that it would not cause any significant congestion.
 11. Moreover, should this condition not be removed this access point would revert to being used by HGVs for both entering and exiting the site. Consequently, these left turn manoeuvres would continue to take place. As the use of tankers reduces the number of movements to and from the site, the loss of the additional access would actually result in this manoeuvre taking place much more frequently.
 12. The appellant indicates that the new layout and access has been operational since June 2018 and so has been in use for over 2.5 years. Whilst I accept that accident data does not record every incident or near misses, the data shows no accidents in the vicinity in the last 5 years. This indicates that whether the site is operating using one access or two, it is not causing any significant highway safety issues.
 13. The Council's evidence shows an example where a tanker turned right rather than left out of the site and they suggest this shows that tankers are unable to turn left. However, from the appellant's evidence and what I saw on site, it is clear that this is not the case. Whilst Banksman may be used when the vehicles leave the site, this is an additional safety measure and is not essential in order to assist drivers to complete the manoeuvre.
 14. Furthermore, whilst HGVs cannot leave the area by turning right due to the width restriction further along the road there is nothing to prevent vehicles turning right from the site if they wish. Vehicles could then turn into Banbury Road, which serves a number of other commercial premises, and where there is sufficient space for them to turn so that they can leave the area in the correct direction.
 15. In the light of the fact that tankers and other HGVs can turn left out of the site within a single manoeuvre, I see no reason why they should utilise the new access to reverse out of the site as suggested by the Council.
 16. Given this, I consider that the condition is not necessary in the interests of highway safety and so its imposition is not reasonable. As a result, there would be no conflict with Policies 5 and 9 of the *Joint Core Strategy and Development Management Policies Development Plan Document (adopted November 2011)*

which seek to ensure that developments do not compromise pedestrian and highway safety. Nor would it conflict with paragraph 109 of the *National Planning Policy Framework* which states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impact on the road network would be severe.

Other Matters

17. A number of concerns have been raised regarding the actual operation of the firm on the site. However, the use of the site for this purpose, which was granted permission in 2014, is not a matter before me in this appeal which is only related to whether the condition is necessary or not. The fact that the area gets used for fly tipping is also not a matter before me in the appeal.
18. Whilst I note the comments regarding the suitability of the local road network for HGVs, and the fact that lorries often miss the turning to Millstream Lane that leads to the site, vehicles would still be accessing this and the other commercial uses in the area irrespective of the outcome of this appeal. In addition, as highlighted above, the use of tankers, reduces the number of vehicle movements to and from the site and so using the local highway network.
19. It is suggested that tankers protrude from the site whilst unloading and that this blocks the road for other users. However, I observed that tankers can be fully accommodated within the site and so there is no need for them to protrude onto the highway.
20. The application also made provision for off-site parking so that the site had sufficient space for the manoeuvring of HGVs. Whilst the appellant no longer owns the site where this was provided, I understand that he still has the agreement of the landowner to be able to park there. In addition, parking can be provided at the other site in his ownership a short distance to the south.

Conclusion and Conditions

21. For the reasons set out above, I conclude the appeal should be allowed. I have therefore granted a new permission for the revised layout and new access which removes the disputed condition.
22. The *Planning Practice Guidance* (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The only other condition on the original permission related to the plans with which the permission should accord which I have reimposed to provide certainty, although I have updated the wording as suggested by the Council to reflect the fact that the development has already taken place. To provide certainty and in the interest of highway safety I have also imposed conditions to ensure the space for manoeuvring vehicles is kept free for this purpose, and confirming how the accesses are to be used.

Alison Partington

INSPECTOR