



Appeal Decision

Site Visit made on 9 March 2021

by Mr A Spencer-Peet BSc.(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Appeal Ref: APP/D0840/W/20/3264414

Land at Holmbush Road, St Austell PL25 3HQ

- 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 EG Group Ltd against the decision of Cornwall Council.
 - The application Ref PA20/03743, dated 4 May 2020, was refused by notice dated 13 November 2020.
 - The development proposed is the construction of petrol filling station and linked store (Sui Generis use) and associated development.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr and Mrs R Holborn against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In the interests of accuracy and consistency, I have amended the original description of development to reflect that as stated on the Council's Decision Notice.

Main Issue

4. The main issue is the effect of the proposed development on highway safety.

Reasons

5. The appeal site comprises grassed land located adjacent to the A390 highway. To the east of the site is a traffic light controlled road junction which links the A390 highway to the A391 highway. The appeal site is immediately bordered to the west by an industrial estate, with a mixture of residential and commercial development occupying space on the southern side of the A390 highway west of the site. The appeal proposal is for a petrol filling station and associated convenience store.
6. The proposed access to the appeal site would be from the adjacent A390 highway. As at the date of my visit, when approaching the proposed point of access from the west the A390 highway increases from one lane to a two lane arrangement on approach to the traffic lights located at the junction with the A391 highway. The westbound lane of the A390 highway is single lane from the abovementioned traffic lights and continues past the site as a single lane.

7. Planning history indicates that the Council approved an outline scheme with all matters reserved except for access, for the construction of a number of industrial units at the appeal site, in February 2018¹ (the Extant Permission). The appeal scheme proposes the same access arrangement to the site to that proposed within the Extant Permission. In this regard, the Appellant maintains that the Extant Permission represents a fallback position.
8. The Council have put it to me that the Extant Permission is unlikely to be constructed by reason of viability and that, consequently, considers that no weight should be attached to this fallback position in the determination of this appeal. Whilst the Council's position is acknowledged, in light of the evidence and submissions made, with particular reference to the approval of a reserved matters planning application, in my view there is a greater than theoretical possibility that the fallback position, in respect of the Extant Permission, would be implemented in the event that this appeal was dismissed. As such, I consider that this represents a realistic fallback position.
9. The evidence and submissions before me indicate that the appeal scheme would generate approximately 148 two-way vehicle movements during the busiest peak hour. It is maintained by the Appellant that a majority of these vehicle movements would be drawn from those already passing the site and that, consequently, only approximately 20%, equating to approximately thirty trips, of movements would be new. However, it is noted that the Appellant has not included diverted trips within this calculation and, in my view, there is therefore the likelihood that there would be more new trips resulting from the appeal scheme than that provided within the Appellant's submissions.
10. In comparison, the evidence indicates that the Extant Permission would generate approximately only twenty new trips in the busiest peak hour. In this regard, even in the event that it is accepted that the proposal would generate only approximately thirty new trips as maintained by the Appellant, I find that the number of new trips likely to be generated from the appeal scheme would be significantly greater than the number of trips associated with the proposed use under the Extant Permission.
11. As noted above, the proposed point of access would be from the A390 highway and very close to the point on the eastbound carriageway where the road becomes two lanes. The appeal scheme proposes changes to the highway arrangement at the proposed point of access to include a traffic island which would restrict the highway to a single lane until vehicles have passed the proposed point of access. The effect of such an arrangement would be to reduce the length of that two lane section of the A390 highway east of the proposed point of access.
12. In this regard, as described above, traffic lights control the junction between the A390 and the A391 and the Council have put it to me that queues of traffic form at these lights which reach back to, or past, the proposed point of access. While the Appellant's submissions are noted regarding queuing on this section of highway, I observed on my site visit, which was conducted during a national Covid-19 lockdown, that traffic, both on the westbound and the eastbound carriageways, was heavy with a constant stream of vehicles passing the site in both directions. Furthermore, I saw on my visit that vehicles heading east on the A390 did form long queues back from the traffic lights almost to the point

¹ Local Planning Authority Reference: PA15/06128

- where the proposed access to the site would be positioned. By reducing the length of the two lane section of highway, it is likely that longer queues would form back from the traffic lights.
13. It is proposed that the point of access to the appeal site would have the benefit of 'Keep Clear' road markings which would provide space for westbound traffic on the A390 to enter the site from the proposed right turn access lane.
 14. However, emerging vehicles turning right from the appeal site would have to cross the new access lane into the site, before being able to proceed in a westerly direction. In this respect such emerging vehicles would be likely to have to occupy the space on the eastbound carriageway and space provided by the turn right access lane, waiting there until such time as there was a gap in the westbound traffic.
 15. Visibility for emerging vehicles turning right out of the appeal site would be restricted by vehicles using the right turn access lane and by vehicles queuing on the eastbound carriageway and therefore it is unlikely that emerging vehicles would be able to exit the site and enter the westbound carriageway in a single manoeuvre. Furthermore, without clear indication as to who has priority when using the proposed right turn access lane, there would be likely conflict between vehicles using that lane to enter the site and those vehicles emerging from the site with the intention to travel in a westerly direction on the A390.
 16. Whilst I would concur that the Keep Clear markings would assist in ensuring there is sufficient visibility and space for vehicles emerging from the site and heading in an easterly direction, in my view the proposed arrangement would be likely to result in substantial risk of conflict between vehicles emerging from the site and those travelling west on the A390 highway and those vehicles using the proposed right turn access lane into the site. In respect of the above, I find that the proposal would have a significant adverse effect with regards to highway safety.
 17. It has also been put to me that the proposal would have a harmful impact with regards to pedestrians and cyclists when crossing the proposed point of access. However, the proposal would replicate the arrangements for other points of access which are present on this section of highway and it is noted that the appeal scheme would provide a refuge crossing point close to the site. Consequently, I find that the proposal would not have a significant harmful effect for pedestrians or cyclists using the footway adjacent to the site.
 18. In summary of the above, whilst I have found that the proposal would not have an adverse effect on the safety of pedestrians or cyclists, I conclude that the appeal scheme would result in conflict between vehicles emerging from the site and those vehicles travelling in a westerly direction on the A390 and those using the proposed right turn access lane. Consequently, the appeal scheme would have a significant adverse effect with regards to highway safety.
 19. For the above reasons, the proposed development would be in conflict with Policy 27 of the Cornwall Local Plan Strategic Policies (2010-2030) (the Local Plan) which seeks to ensure that development provides safe and suitable access for all people. The appeal scheme would also fail to accord with the provisions of paragraphs 108 and 109 of the National Planning Policy Framework (the Framework) which seek to ensure that development provides

- safe access for all users and confirms that development should be refused where there is an unacceptable impact on highway safety.
20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.
21. As noted above, my attention has been drawn to the Extant Permission which, for the reasons given, I have found to be a realistic fallback position. In this regard, the Appellant maintains that, given the same proposed point of access and arrangements were found to be acceptable on grounds of highway safety in relation to the Extant Permission, that the proposed access in relation to the present appeal scheme should also be acceptable.
22. However, it is apparent from the evidence before me, as noted above, that the appeal scheme would be likely to generate a significantly greater number of vehicle movements than that which would be likely to arise from the Extant Permission. Consequently, there would be the greater likelihood of conflict arising between vehicles in relation to the use of the proposed access arrangement than that which would be the case in respect of the Extant Permission. Whilst I acknowledge that the number of heavy goods vehicles entering and exiting the site may be lower for the appeal scheme, fuel tankers would still need to regularly access the site. I therefore find that the fallback Extant Permission would be less harmful with regards to highway safety than the appeal scheme.
23. The appeal scheme would provide benefits in the form of employment opportunities, both during construction and in relation to the operation of the site as a petrol filling station and store. The site is accessible by public transport and would provide access to additional electric charging points. Whilst I acknowledge the Appellant's submissions regarding availability of such services within the surrounding area, it is apparent from the evidence before me that such facilities are available close to the appeal site.
24. By reason of the likely number of employment opportunities that the proposal would bring, and in combination with the other benefits which the Appellant has put to me that would arise from the proposal, cumulatively I attach substantial weight to these benefits in the determination of this appeal.
25. Against these benefits and for the reasons given above, the appeal proposal would have a significant harmful effect with regards to highway safety and, in that regard, would conflict with Policy 27 of the Local Plan and the Framework when taken as a whole. The harm resulting from the conflict with the development plan and the harmful effect of the proposal with regards to highway safety, weighs significantly against the proposal. Consequently, I conclude that the significant harm identified above would outweigh the benefits of the appeal scheme. Once these matters are considered together, the appeal scheme could not be considered to be sustainable development in the context of the Framework or in terms of Policy 1 of the Local Plan for which there is a presumption in favour of.
26. The Appellant has referred me to an appeal decision² which, it is maintained, relates to a scheme that would provide for similar access arrangements and

² Appeal Reference: APP/E2734/W/18/3195782

Keep Clear road markings as that in relation to the present appeal scheme. However, I have only been provided with very limited information regarding that appeal, and from the limited details provided it appears that the two matters are not comparable by reason of the number of trips generated by the respective schemes, as well as not being comparable in terms of the highway arrangement. I have therefore determined this appeal on its own merits.

Conclusion

27. The proposed development would conflict with the development plan when taken as a whole. There are no material considerations that would lead me to reach a determination other than in accordance with the development plan. As such, the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR