



Appeal Decision

Site Visit made on 7 September 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2021

Appeal Ref: APP/G1630/W/21/3275995

**Land Adjacent To Highfield Business Park, Off Cursey Lane,
Tewkesbury GL19 4BP**

- 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 full and outline planning permission
 - The appeal is made by Harry Wolton Ltd against Tewkesbury Borough Council.
 - The application Ref 20/00464/FUL, is dated 29 May 2020.
 - The development proposed is described as hybrid planning application seeking 1. Full planning permission for the erection of a B2 unit (general industrial) with associated landscaping, access and parking. 2. Outline planning permission (all matters reserved except access) for a mix of B1, B2 and B8 use classes (employment).
-

Decision

1. The appeal is dismissed and planning permission is refused for hybrid planning application seeking 1. Full planning permission for the erection of a B2 unit (general industrial) with associated landscaping, access and parking. 2. Outline planning permission (all matters reserved except access) for a mix of B1, B2 and B8 use classes (employment).

Application for costs

2. An application for costs has been made by Harry Wolton Ltd against Tewkesbury Borough Council. This is the subject of a separate Decision.

Preliminary Matters

3. The name of the appellant in the header above is taken from the application form. The appeal form indicates a different company as the appellant, although it has been explained that Harry Wolton Ltd is an agent acting on its behalf. As such, I am satisfied the appeal has been lodged by an appropriate party.
4. The planning application is in hybrid form. It seeks full planning permission for the erection of a B2 unit with landscaping, access and parking as well as outline planning permission for a mix of B1, B2 and B8 use classes. In respect of the outline application, approval is sought for details of access but all other matters are reserved for future consideration. I have assessed the appeal on this basis and treated the non-access details that relate to the outline element of the development as being submitted for illustrative purposes.
5. The description of the development refers to Use Class B1. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 amend the Town and Country Planning (Use Classes) Order 1987 so as to revoke Class B1. However, the Regulations provide that where a planning

application was submitted prior to the commencement of the material period, the application must be determined by reference to those use classes which were in effect when the application was submitted. The application was submitted prior to 1 September 2020 and so I have determined the appeal with reference to the now revoked Use Class B1.

6. An emerging Tewkesbury Borough Plan (eBP) has been the subject of an examination and the examining Inspector has advised that it can be made sound by a series of modifications. The eBP is fairly advanced although it is not yet adopted. Appropriate weight can be afforded to its policies depending upon the extent to which they are subject to modification.

Main Issue

7. The Council has not issued a formal decision on the planning application. In light of its appeal submissions, the main issue is the effect of the proposal on highway safety in respect of vehicular movements at the Cursey Lane junction with the A38.

Reasons

8. As it passes the western boundary of the site, the A38 is a dual carriageway subject to national speed limits. The main vehicular access to the development would be off Cursey Lane to the south of the site. There is a gap in the central reservation on the A38 that allows vehicles to leave Cursey Lane and cross over the carriageway to join the northbound traffic on the opposite side of the road. The same gap with an associated right hand turn filter lane allows vehicles from the south to cross the A38 and enter into Cursey Lane.
9. The Council's transport and highways evidence identifies design faults with the Cursey Lane and A38 junction when assessed against the Design Manual for Road and Bridges (DMRB). These include significant shortfalls in the width of the central reservation, the width of the crossover opening and the deceleration and taper lengths of the right hand turn lane on the northbound side of the A38. The DMRB guidance relates to the design of new junctions and failure to comply does not necessarily show existing roads are unsafe. However, the appellant does not dispute the defects identified by the Council.
10. Given the flaws in its design, there is a risk that vehicles using the junction would cause obstruction to fast moving traffic on both lanes of the A38. This would be particularly the case for heavy goods vehicles (HGVs) or longer vans which may overhang onto the main carriageway while waiting on the crossover space or the right hand filter lane. There is a greater risk of hazardous obstruction to traffic flows when vehicles are entering the crossover from Cursey Lane and from the northbound lanes of the A38 at the same time.
11. No vehicular count survey has been submitted to support the appellant's contention that traffic along Cursey Lane is minimal. The road already contains warehouse premises, a poultry farm and other properties that are likely to generate traffic movements. My visit can only provide a snapshot in time but over a short period I saw a fair level of traffic entering into Cursey Lane and exiting out onto the A38, including HGVs and agricultural vehicles. Without any survey information that demonstrates to the contrary, it is reasonable to expect the Cursey Lane and A38 junction currently experiences a modest level of vehicular movement.

12. Based upon analysis of TRICS data, the appellant suggests the proposal would not generate a significant level of traffic. However, Highways England do not accept the appellant's predicted traffic generation figures. Moreover, the Council has provided its own predictions, based upon TRICS data but using different survey selection criteria that are more akin to the proposal. These show the development would generate levels of traffic in line with Highway England's estimates and markedly higher than those envisaged by the appellant. Accordingly, I find the Council's predictions are more convincing.
13. It is likely that a proportion of the traffic to and from the development would use the A38 crossover point to access the northbound lanes and to gain access to Cursey Lane when travelling from the south. However, there is no evidence on the likely increase in such movements. In the absence of this information and in light of the junction's design defects and the appellant's underestimate of trip generation, it has not been clearly demonstrated that traffic generated by the proposal would be safely accommodated at the junction.
14. Highways England raise no objections to the scheme, although it appears its submissions focus on the impacts on the strategic highway network with little indication it has considered the effects on local roads. Gloucestershire County Council's no objection comments were made prior to the production of Tewkesbury Borough Council's transport and highway evidence. As such, I find the local highway authority's views should not be determinative on this matter.
15. The appellant contends that the Council has not conclusively shown the proposal would be unacceptable in terms of its highway impacts. However, policy INF1 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2017 (JCS) is clear in putting a responsibility on developers to assess the impacts of proposals on travel safety. For the reasons set out above, I find the appellant has not satisfactorily complied with this requirement.
16. Therefore, I conclude the development would harm highway safety in respect of vehicular movements at the Cursey Lane junction with the A38. In these regards it would be contrary to JCS policy INF1. For the same reasons, it would not accord with eBP policy EMP5 which looks to ensure safe and satisfactory vehicular access at new employment development. As it is not yet adopted, I attach moderate weight to the conflict with the eBP policy.

Other Considerations and Planning Balance

17. The Council's transport and highways evidence raises concerns in respect of visibility splays at the proposed access, the constrained nature of Cursey Lane, lack of improvements to cycle, pedestrian and bus access and the proposed Travel Plan. However, the Council's appeal statement indicates that it objects solely in respect of traffic movements at the Cursey Lane and A38 junction. Therefore, it follows that the Council finds the proposal would be acceptable in all other highway and travel respects. There is no reason for me to arrive at a different view on these matters, although acceptability in these regards fails to address or override the identified harm to highway safety.
18. The Council raise no objections to the design of the development, its impact on the landscape or on ecology or flood risk grounds. Acceptability in these regards is a neutral factor in my assessment.

19. The appellant raises a concern that refusal of planning permission would require access to any development on the site to be provided on land to the north. It is contended that this would lead to a ransom situation and so render the development of the site unviable. However, it does not follow from my conclusion in respect of highway safety that an access across land to the north would be required to develop the site. Moreover, there is no evidence to demonstrate the proposal would be unviable should access be necessary across the adjacent land. Therefore, I attach limited weight to this factor in my assessment.
20. Under eBP policy EMP2, the site is allocated as a rural business centre where new employment development is acceptable in principle. In these regards, the proposal would be in line with the emerging policy. Moreover, the B2 unit would enable the expansion of an existing business and the scheme would support economic growth. These benefits attract significant positive weight.
21. However, from the evidence before me, I consider the development would have an unacceptable impact on highway safety. The harm in this respect attracts considerable weight and means the proposal would not accord with the development plan when read as a whole. The benefits of the scheme and other factors are of insufficient weight to justify granting planning permission contrary to the development plan.

Conclusion

22. For the above reasons, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR