



Appeal Decision

Site visit made on 9 May 2022

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 21st June 2022

Appeal Ref: APP/Y2003/W/21/3287055

Land at Mannaberg Way, Scunthorpe, North Lincolnshire, DN15 8XF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Carl Godley (Godley Fenix Ltd) against the decision of North Lincolnshire Council.
 - The application Ref PA/2021/1446, dated 10 August 2021, was refused by notice dated 29 October 2021.
 - The application sought planning permission to erect a drive-thru coffee shop with associated works without complying with a condition attached to planning permission Ref PA/2020/218, dated 4 May 2021.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans:
Proposed site plan 717-2-010 Rev B
Floor Plans A1001
Elevations A 2001
Elevations A 2002
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted to erect a drive-thru coffee shop with associated works on land at Mannaberg Way, Scunthorpe, North Lincolnshire, DN15 8XF in accordance with the application Ref PA/2021/1446, dated 10 August 2021, without compliance with condition number 2 previously imposed on planning permission Ref PA/2020/218, dated 4 May 2021, subject to the conditions in the schedule at the end of this decision.

Procedural matter

2. On the planning application and appeal forms ownership certificate A was completed which states that the applicant was the sole owner of the whole of the site outlined in red on the location plan. However, the grass verge and pavement along Mannaberg Way, which lies within the red line of the site and would be used to create the proposed slip lane and access, is actually adopted highway. As a result, it is not owned by the applicant.
3. The purpose of the notification of a planning application to all owners of the land involved is so that no prejudice is caused and to allow them, if they so wish, to comment upon the proposal. Given that the concerns of the highway authority though are clear from their representations, the failure to issue the correct certificate does not in this instance invalidate the application or appeal.

Main Issue

4. The appellant wishes to change the approved existing access to the appeal site from Wybeck Road by replacing it with a new access created off Mannaberg Way. The main issue in this appeal is the effect of the proposed access on highway safety.

Reasons

5. The appeal site is located by a four armed roundabout on the corner of Mannaberg Way (A0177) and Normanby Road (B1430). The roads that approach the roundabout are two way, single carriageways with a speed limit of 40mph. The roads carry a mixture of cars and heavy vehicles connecting industrial areas as well as providing connections to the motorway network and a local connection to the Humber Bridge.
6. In the extant planning permission the approved site access is the existing access off Wybeck Road, which itself is located off Mannaberg Way, to the east of the roundabout. This access also serves neighbouring businesses.
7. The proposed access that is the subject of the appeal would create a direct access to the site off Mannaberg Way. In response to criticism of earlier proposals for such an arrangement, rather than creating a simple T junction with the main road, the appeal proposal would create a dedicated slip lane off the roundabout into the appeal site. In so doing, it would separate traffic visiting the drive-thru coffee shop from ongoing traffic.
8. I recognise that Mannaberg Way is a principal traffic route used by heavy vehicles as well as cars. However, the separate slip lane proposed and provision for the stacking of vehicles within the site minimises the chances of vehicles seeking to enter the appeal site coming into conflict with vehicles continuing eastwards along Mannaberg Way. The results of the speed survey, which identifies that vehicle speeds approaching the roundabout are considerably lower than the 40mph speed limit, further supports this assessment.
9. In relation to vehicles approaching in the opposite direction along Mannaberg Way, a dedicated right turn filter lane is proposed. This lane appears to be sufficiently long to accommodate traffic waiting to turn into the site without blocking traffic behind. The proposed relocation of bus stops on both sides of Mannaberg Way further to the east would avoid interference with the operation of the proposed access and the free flow of traffic.
10. In the absence of substantive evidence to the contrary submitted by the local planning authority, I find that the creation of the proposed lane would effectively overcome the risk of rear end shunts between vehicles slowing to enter the appeal site and vehicles accelerating away from the roundabout.
11. Taking all these matters into account, I therefore conclude that the proposed access would be safe in compliance with policy T2 of the North Lincolnshire Local Plan (Local Plan) which requires the provision of a satisfactory access. As a result, it would also comply with paragraph 111 of the National Planning Policy Framework which advises development should only be prevented on highway safety grounds if there would be an unacceptable impact on highway safety.

12. Policy T19 of the Local Plan has also been referred to. However, as this policy relates to car parking provision, and the Council has not stated that the level of on-site parking that would be provided would be inadequate, this policy is not relevant to the main issue.

Conditions

13. In compliance with section 73(5) of the Act, the time period within which the development must start is within three years of the date of the original permission.
14. The guidance in Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As the Council states that none of the conditions in the extant permission have been discharged, and the appellant has not challenged this assertion, I have imposed the same conditions, revised where necessary to reflect the advice contained within Planning Practice Guidance regarding enforceability. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
15. The creation of the site access would involve the development of land owned by the highway authority and not in the control of the appellant. As a result, it would be unreasonable to rely solely on the condition requiring that development is carried out in accordance with the approved plans. A negatively worded condition has therefore been attached preventing first use of the development until the site access has been created.
16. To address surface water drainage issues associated with the creation of the access, further details are necessary. The conditions suggested by the Lead Local Flood Authority require details to be agreed prior to the commencement of development. However, I am not persuaded that this is necessary and have amended the suggested conditions accordingly.
17. The local planning authority has stated that highway safety conditions should be attached. However, given that I have found that the proposed access would be safe, in the absence of any suggested conditions from the local planning authority on highway safety and the detailed matters that they should address, I find that no further conditions are necessary.

Conclusion

18. For the reasons given above, I conclude that the appeal should be allowed.

Ian Radcliffe

Inspector

Schedule

- 1) The development hereby permitted shall begin not later than 4 May 2024.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Proposed Site Plan 717-2-010 Rev C

Proposed Access Arrangements LTP/3973/P2/01.01 0

Floor Plans A1001

Elevations A 2001

Elevations A 2002

- 3) Prior to the commencement of any site access works, a detailed Flood Risk Statement and Drainage Strategy shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to the commencement of any site access works, details showing an effective method for preventing surface water run-off from hard paved areas within the site onto the highway shall be submitted to and an approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 5) Prior to the first use of the development hereby permitted the site access shall have been created in accordance with plan refs 717-2-010 Rev C, LTP/3973/P2/01.01 0
- 6) The proposed new unit shall not be brought into use until:
 - the pedestrian/cycle access to the site;
 - the turning and servicing areas;
 - the parking spaces and access aisles;
 - the cycle parking facilities; and
 - site signage and surface markings;have been provided in accordance with details that have been submitted to and approved in writing by the local planning authority and all these facilities shall thereafter be so retained.
- 7) The proposed unit shall not be brought into use until a delivery/servicing management plan (including delivery times) has been submitted and approved in writing by the local planning authority. The management of deliveries and servicing of the development shall be carried out in accordance with the approved plan.
- 8) No development shall take place until a construction phase traffic management plan showing details of:
 - (i) a pre/post construction condition survey of the carriageway to identify any defects and how they will be rectified;
 - (ii) all associated traffic movements, including delivery vehicles and staff/construction movements;
 - (iii) any abnormal load movements;

- (iv) contractor parking and welfare facilities;
- (v) storage of materials; and
- (vi) traffic management requirements, including the means of controlling the deposition of mud onto the adjacent highway, along with appropriate methods of cleaning the highway, as may be required;

has been submitted to and approved in writing by the local planning authority. Once approved the plan shall be implemented, reviewed and updated as necessary.

- 9) Prior to first use of the development hereby permitted, details of all external lighting proposed across the site shall be submitted to and agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details and the external lighting shall be retained thereafter.
- 10) If, during development, any odorous, discoloured or otherwise visually contaminated material is found to be present at the site then no further development shall be carried out until a written method statement detailing how this contamination shall be dealt with has been submitted to and approved in writing by the local planning authority.