
Appeal Decision

Site visit made on 12 July 2022

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th October 2022

Appeal Ref: APP/X1925/W/21/3289940

Land between Croft Lane, Norton Road and Cashio Lane, Letchworth Garden City, Hertfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Hertfordshire County Council against the decision of North Hertfordshire District Council.
 - The application Ref 19/00520/OP, dated 26 February 2019, was refused by notice dated 16 July 2021.
 - The development proposed is for residential development of up to 42 dwellings, all matters reserved apart from access.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Hertfordshire County Council against North Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of proposed development included in the banner heading above reflects minor drafting changes from that included in the application form; these allow clarity.
4. The appeal has been accompanied by a completed Unilateral Undertaking dated, 16 June 2022. The appeal was not accompanied by a CIL compliance schedule. Accordingly, I decided to make the validity of the Undertaking as a main issue and consulted both parties.
5. The sole reason for refusal includes references to paragraphs in the National Planning Policy Framework (the Framework). Although the most recent version is cited, the paragraph numbers are incorrect. I accept that this was a drafting error. I refer to the correct paragraphs in this decision.
6. Finally, the appeal is for an outline scheme with only the means of access being determined at this stage. For this reason, although the appeal was accompanied by several plans, these are to be considered for illustrative purposes apart from the details of the proposed access and highway measures.

Main Issues

7. The appeal raises the following main issues:

- The effect of the proposal on highway safety, and
- Whether or not the completed Unilateral Undertaking is valid.

Reasons

8. The appeal site comprises a former playing field surrounded on 3 sides by large detached residential properties. Part of the site was used as a depot by the County Council with access from Croft Lane. This access point is proposed for this scheme.
9. Croft Lane (the lane) is a narrow and does not include pedestrian footways along part of its length. Although its width varies there are sections where it reduces to below 4m. This is below the carriageway width required by the Hertfordshire Design Guide for a shared surface.
10. Croft Lane is well treed and the area around the proposed access to the appeal site is included in the Croft Lane Conservation Area (the CA). A central feature of the CA is the form and alignment of the lane enhanced through the extent of tree coverage. Whilst for its most part the lane is surrounded by housing this includes large detached properties which have historical and architectural connection to the foundation of the Garden City. Four of these are listed and share a rear boundary with the appeal site with the listed Paynes Farm lying opposite the site of the proposed access to the site. There are other non designated heritage assets along Norton Road which also back on to the site. Many of the more recent residential properties along the Lane, being set well back and in spacious gardens, retain this character.
11. The TA¹ included with the appeal identifies that during the morning and evening peak hours Croft Lane carries around 27 and 41 vehicles respectively. Traffic modelling on around 50 dwellings proposed for the site indicates that these would increase to around 57 and 69 vehicle movements in the same periods.
12. The difference between the parties on this main issue is the extent to which the projected increase in traffic can be accommodated without prejudicing pedestrian safety. Representations from interested parties indicate that the lane is important both in its historical function as a country lane and also in terms of its use as an important route for school children and other vulnerable users. The lack of footways, narrow width and alignment suggest that Croft Lane could not take the projected increase in traffic without prejudicing highway safety.
13. Furthermore, a related matter, which I address later in this decision, is the whether the character and appearance of the CA, as a designated heritage asset, would be prejudiced both by the works to create the new access and the increase in volumes of traffic.
14. As part of the site allocation work for the emerging local plan (ELP) access options were considered which determined that the access design included in the appeal scheme was the only one which balanced safety with the

¹ Transport Assessment

requirements to protect the CA as a designated heritage asset. My understanding is that the need to balance these considerations resulted in the officer comment during the Committee report that additional traffic management measures were not possible. However, the overriding comment from the County as Highway Authority is that it had no objection to the proposed scheme.

15. I acknowledge that in the context of the existing traffic flows along both Croft Lane and Cashio Lane the increased traffic arising from the scheme would be significant. However, this reflects the extremely low amounts of traffic which currently use these routes. Overall the total anticipated flows would not be excessive for Croft Lane which could still operate as a shared surface.
16. Interested parties have sent in images of large vehicles blocking Croft Lane. Whilst these demonstrate the lane's narrowness they are also an indication of how such hazards could reduce the average speed of traffic. This is supported by appellants evidence². This is likely to reduce further with an increase the increase in traffic from the appeal scheme.
17. Furthermore, the scheme includes a series of measures included in a Section 278 Agreement to 'manage' traffic speed and flow. These include raised speed tables at the proposed access, localised footway and carriageway widening along Croft Lane where possible³, an uncontrolled pedestrian crossing in Cashio Lane by the shared access and at its western end, with a speed table at the junction of Norton Road/Croft Lane.
18. Although interested parties⁴ identify that Croft Lane does not adhere to the standards required for an access road to be used as a shared surface, this range of measures would protect highway users. For this reason, I consider that additional traffic could be accommodated without unduly impacting on highway safety.
19. The report⁵ commissioned by the interested parties makes reference to other road schemes within the County where the Highway Authority (HA) has responded differently from how it has addressed similar issues in this appeal. I do not know the full details of each of these schemes and whether mitigation such as that in the Section 178 Agreement for this scheme was also required. However, it is evident that the HA allows discretion from design standards if site characteristics require that. I am satisfied that the suggested measures included in this scheme would adequately address highway safety.
20. The proposed access includes visibility splays of 2.5metres by 43metres along Croft Lane designed to reduce the possibility of conflict between road users and road uses and other highway users. Interested parties acknowledge that there has been no recent record of PIAs⁶ although some accidents have still occurred with traffic running into boundary hedges. However, the proposed access arrangements were tested as part of a RSA⁷ and I am satisfied that the access would not prejudice highway safety.

²² Stomer Transport Assessment

³ Ibid

⁴ Report of TPA May 2022

⁵ TPA report for Norton Action Group

⁶ Personal Injury Accidents

⁷ Road Safety Audit

21. Interested parties have raised concerns over the adequacy of the swept path in demonstrating how the movement of service vehicles could be entirely kept on the highway. I accept that this would be tight but the suggested alignment included in the ST-2571-22 Option 7B would allow adequate movement without compromising safety or over running of the road verges⁸.
22. Whilst there would be a loss of several trees around the proposed access these do not contribute significantly to the distinctive character of the Croft Lane CA.
23. Although interested parties state that the existing road junction with Croft Lane and Cashio Lane does not meet adopted standards it is an existing junction and no evidence has been presented to me that it is an accident point or that the increase in traffic arising from this development poses a significant risk to highway safety.
24. The Council identified that the proposed scheme conflicts with Policies T1, SP6, and SP7 of its ELP. A common theme running through each of these is a requirement that development will not compromise highway safety problems and that accessibility improvements and infrastructure is provided to accommodate additional demands arising from new development.
25. The Framework advises that places should be made safe (paragraph 130(f)) and that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe (Paragraph 111). The proposal would not affect safety and neither of the matters referred to in Paragraph 111 prevail in this instance.
26. I acknowledge that the proposed scheme would increase traffic movements along Croft Lane and within the immediate vicinity of the site but that the increase would not be of such a scale that highway safety would be seriously prejudiced. The measures included in the Section 278 Agreement are sufficient to balance concerns in respect of highway safety. For these reasons, I conclude that the proposed scheme does not conflict with the emerging policies T1, SP6 and SP7 or Paragraphs 130(f) and 111 of the Framework.

Validity of the Undertaking

27. Planning law requires planning obligations, in the case of this appeal, those included in the Unilateral Undertaking dated 16 June 2022, to be supported by a CIL⁹ compliance statement. This justifies each obligation within the requirements of adopted policy and is required to meet the statutory tests included in the CIL Regulations which are also identified in the Framework. These tests require that obligations are necessary to make the development acceptable, directly related and fairly and reasonably related in scale and kind.
28. The officers report refers to various planning obligations included in the Undertaking in respect of affordable housing, education, libraries, youth services, sustainable transport, leisure, open space, the community centre, play space, sports pitches, waste and recycling. Some of these are County matters but others are covenants in the Undertaking in favour of the Council.

⁸ Stomer – Technical Report June 2022

⁹ Community Infrastructure Levy

29. The officer report provides policy support for the contributions for affordable housing and includes a statement¹⁰ that the Undertaking is compliant with the CIL Regulations.
30. However, as the policy justification based on adopted policies in the Development Plan is not before me I am not satisfied that the tests are met.
31. For this reason, I conclude that the planning obligations included in the Undertaking do not comply with the tests as required by the CIL Regulations and Paragraph 57 of the Framework.
32. For these reasons, on this main issue I conclude that the Unilateral Undertaking, dated 16 June 2022 is not valid.

Planning balance

33. The extent of harm on the CA, the listed buildings and non designated heritage assets, arising directly from the appeal scheme would be less than substantial. Although I must give considerable importance and weight to even such limited harm, in the wider context of the appeal scheme this has to be set against the considerable public benefits including the provision of up to 40% of all dwellings being affordable and the provision of market housing. This would make an important contribution to the Council's housing land supply position which both parties acknowledge is around 1.47 years supply¹¹.
34. There would also be other economic benefits arising from employment in construction and the additional spend power of residents in local services.
35. In respect of the issue of highway safety I am satisfied that the amount of traffic generated by the site would not prejudice highway safety.
36. However, the appellant has included with the appeal a Unilateral Undertaking containing a range of measures designed to mitigate for the impacts of the development. In the absence of a reasoned policy justification for each of these, the Undertaking does not comply with Regulation 122 of the CIL Regulations and Paragraph 57 of the Framework.
37. For this reason, the appeal is dismissed.

Stephen Wilkinson

INSPECTOR

¹⁰ Paragraph 4.3.59

¹¹ Statement of Common Ground