
Appeal Decision

Site visit made on 10 February 2023

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st February 2023

Appeal Ref: APP/Z2315/W/22/3307132

Land at Junction 9, M65

- 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 Mr Kevin Walsh against the decision of Burnley Borough Council.
 - The application Ref: FUL/2022/0270, dated 2 May 2022, was refused by notice dated 14 September 2022.
 - The development proposed is the construction of 2 agricultural buildings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Kevin Walsh against Burnley Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposal on highway safety, with regard to the access arrangements.

Reasons

4. The appeal site comprises part of a grassed field, together with an access track which joins onto the public highway at junction 9 of the M65. The access currently serves stables and associated development, along with activities associated with the field. The access is of a tarmac construction with a dropped kerb. It is splayed and defined by white stones across the verge up to where the site is gated.
5. Traffic that emanates from the eastbound off slip road at the motorway junction passes the site access. The westbound on slip road lies near opposite the access. There are also industrial estates that are accessed past the site on either side of the motorway junction. The road outside the site is well trafficked, including regular passage by heavy goods vehicles. The speed limit for traffic passing the site access is set at 40 miles per hour. There is various signage and street apparatus around the motorway junction, including close to the site.
6. The evidence that I have before me that access can be taken safely is of a limited nature. The appellant is reliant on photographic evidence taken from videos of the typical forms of vehicles using the access which are likely to serve

the proposal. The movements which are shown are reliant on behaviours of the particular driver(s), rather than amounting to a calculation and analysis of the movement and path of the different parts of a vehicle undertaking turning manoeuvres at the point of egress and ingress. In light of the location of the site access at a motorway junction and the traffic conditions, it does not amount to persuasive evidence that the site would be able to be accessed safely. In addition, there is evidence of overruns at the site access that I observed on my site visit, even with the white stones. Whilst this may not be attributed to the appellant, it shows manoeuvrability difficulties at the point of access.

7. Lancashire County Council (LCC) as a Highway Authority has stated that the road forms a strategic route. It forms part of a motorway junction. When a proposal would be accessed from such a road, highway safety is therefore a matter which requires robust scrutiny, even with the type of vehicles associated with this proposal. It is important for it to be properly demonstrated that the carriageway would not be crossed and overruns would not occur, with respect to highway safety considerations. It is not therefore unsurprising that LCC requested the submission of further evidence during the course of the planning application by way of a swept path analysis. This was not forthcoming.
8. The appellant has pointed to the potential for a reduction in vehicular movements if animal feed and other materials are stored in the proposed buildings, rather than been brought to site. Similarly though, the details I have on related vehicular movements are of a restricted nature and so this does not address my concerns. As a consequence, that the site access is established and would remain how the land and the existing development is accessed has a limited bearing. Nor does that the access allows vehicles to pull clear of the highway address the principal concern over vehicles turning on and off the highway itself.
9. In the absence of sufficient information, it is also not known if mitigation measures might be required at the access in order to make it safe for the proposal, including the manoeuvrability of vehicles in relation to turning. The appellant has also stated that the access is privately owned as far as is known and so this also casts some doubt over whether the imposition of a related planning condition would be reasonable to deal with highway safety.
10. Further deliberations on sightlines do not substantively take my appeal decision any further, notwithstanding that LCC has provided evidence that the visibility splays would not meet the guidance set out in the Design Manual for Roads and Bridges, as well as that there is large signage close the access. The issue is the failure to provide adequate information to show that the proposal can be accessed safely.
11. As such, these matters cannot be overcome through the imposition of a planning condition without having the potential to nullify a permission. While LCC did refer to planning conditions during the course of the planning application, it seems to me this was predicated on the swept path analysis being provided.
12. The appellant has also commented that LCC do not object in principle. However, it still has to be effectively demonstrated that there would not be an unacceptable impact on highway safety, as is set out in paragraph 111 of the

National Planning Policy Framework. In taking all of these considerations together, it has not been adequately demonstrated that vehicles can enter or egress the site in a safe manner without detriment to the safety and efficiency of the surrounding highway network. The harm that would arise attracts significant weight in my decision.

13. I conclude that the proposal would have an unacceptable effect on highway safety, with regard to the access arrangements. Accordingly, it would not comply with Policy IC1 of the Council's Burnley's Local Plan (2018) where it concerns safe and convenient access, including providing for safe pedestrian, cycle and vehicular access to, from and within the development, including adequate visibility splays; and, maintaining the safe and efficient flow of traffic on the surrounding highway network, amongst other considerations.

Other Matters

14. The site lies in the Green Belt. The Council considered that the proposal would not constitute inappropriate development and I see no reason to disagree as buildings for agriculture. It would also be not unacceptable in character and appearance terms. The need for the proposal is not in dispute. These matters attract neutral weight. In biodiversity terms, the appellant has offered to install a swallow cup on each of the proposed buildings and this attracts moderate weight as a benefit. This does not however outweigh the harm that would arise with regard to highway safety.

Conclusion

15. For the reasons set out above and having regard to all matters that have been raised, the appeal should be dismissed.

Darren Hendley

INSPECTOR