



Appeal Decision

Site visit 12 April 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Appeal Ref: APP/U3935/W/22/3306629

Land at Latham Road, Latham Road, Abbey Meads, Swindon SN25 4DL

- 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 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 John Lewis of Icon 2 Limited against the decision of Swindon Borough Council.
- The application Ref S/21/1986 is dated 20 December 2021.
- The application sought planning permission for 'Erection of a storage and distribution centre (Use Class B8), with ancillary offices and welfare facilities, service yard, parking areas, landscaping and other associated works,' without complying with a condition attached to planning permission Ref S/21/0274/TB, dated 14 December 2021.
- The condition in dispute is No3 which states that: *'The development hereby permitted shall not be brought into use until the infrastructure improvements to the A419 northbound offslip as shown on Drawing 14447/PA/1300 Rev P2, or an alternative solution agreed in writing by the Local Planning Authority (who shall consult with Highways England), has been completed in accordance with the Local Planning Authority's approval (who shall consult with Highways England) and is open to traffic.'*
- The reason given for the condition is: *'To mitigate against the impact of development traffic upon the strategic road network and ensure the safe and free flow operation of the A419 trunk road.'*

Decision

1. The appeal is dismissed.

Background

2. Planning permission S/21/0274/TB granted consent for a storage and distribution centre providing approximately 10,100 square metres of floorspace, subject to 22 conditions. Condition 3 is a negatively worded, 'Grampian' style condition which requires certain highway infrastructure works to take place in advance of the development being brought into use. The infrastructure works relate to improvements to the A419 northbound offslip of the Blunsdon junction.
3. The condition was formally recommended to the Council by National Highways (NH), who are the body responsible for the Strategic Road Network (SRN). The A419 is a trunk road that forms part of the SRN.

4. The appellant seeks to remove condition 3. The provisions of section 73 of the Town and Country Planning Act 1990 restrict my consideration to the question of the conditions subject to which planning permission should be granted. The Council failed to make a determination. However, it is clear from their appeal statement that had they been in a position to make a determination, they would have resisted the removal of the condition.

Main Issue

5. The main issue is whether the condition is necessary, relevant to the development, reasonable or enforceable having regard to the impact of development traffic upon the safety and operation of the A419 trunk road.

Reasons

6. The A419 is subject to the national speed limit and is generally a fast dual carriageway carrying considerable volumes of traffic to the east and north of Swindon, eventually linking with junction 15 of the M4. The appeal site is situated close to the A419 Blunsdon junction. NH report that this junction operates under constraint during weekday peak hours, with evening peak queues extending from the A419 off-slips onto the mainline. The presence of slow moving or stationary traffic seeking to exit the A419 presents a considerable hazard to approaching vehicles travelling at considerably higher speeds. It is foreseeable that such situations would allow for limited stopping time, necessitating oncoming drivers to brake sharply or abruptly change lanes to avoid the obstacle.
7. These factors increase the risk of collision, and the speed and amount of traffic increases the magnitude of risk should a collision occur. NH consider that any additional vehicles exacerbating the mainline queue in these circumstances would have an unacceptable impact on highway safety. In addition, the congestion interrupts the free flow of traffic along the A419 making the use of the road less efficient for the movement of people and goods. NH categorically state¹ that without mitigation at the Blunsdon off-slip, the appeal proposal's traffic impact is considered to be severe and unacceptable in capacity and safety terms.
8. Given the role and expertise of NH in relation to the SRN, their formal recommendation is one that carries considerable weight, and is not one that ought to be set aside lightly. This is generally reinforced by the provisions of the Town and Country Planning (Development Affecting Trunk Roads) Direction 2018 whereby a Local Planning Authority that does not intend to follow the recommendation of the strategic highway company (in this case NH) must first consult the Secretary of State for Transport.
9. The evidence before me indicates that mitigation works, which would include addressing peak hour queueing on the A419 north bound off-slip to the Blunsdon junction have been identified as part of an approved urban extension referred to as the Tadpole Farm or Tadpole Garden Village development (TGV). This is the scheme to which the drawing number cited in condition 3 refers. NH² describe these works as involving widening, associated lining and signage as well as improvements to junction signals, which is consistent with drawing 1447/PA/1300 Rev P2 provided.

¹ Letter dated 29 July 2022, Appendix 6, Council's Statement of Case

² Email dated 20 April 2022

10. It is alleged that the TGV development is in breach of a similar Grampian style condition for the works. In any event, the improvement works have not yet been implemented. The most recent position in the information presented to me³ suggests that progress is being made with the respective developer on a legal agreement pertaining to the highway works, with an expectation that works will commence in June 2023.
11. It is not disputed that the approved storage and distribution centre at the appeal site would generate additional traffic. The appellant's transport evidence⁴ indicates that the development would typically generate 44 two-way trips in the morning peak hour and 54 such trips in the evening peak hour. During the critical PM peak hour when long queues form on the A419 north bound off-slip, 22 arrivals are forecast. Given the proposed distribution use and proximity of the appeal site to the A419, it is highly likely that many of the arrivals would be via the A419 northbound off-slip. Hence, they would be likely to add to the existing long queues. Even those that did not use the off-slip itself would likely add to competing traffic flows around the signalised junction with the off-slip, thereby adding to congestion.
12. The appellant refers to HGV's and shift workers travelling to the distribution centre and considers that the extent and nature of the traffic movements would avoid peak times. However, there is no guarantee that the nature of the movements would only involve HGV's and shift workers. The development description includes ancillary offices which may house workers with more conventional working patterns. Furthermore, it is not unforeseeable that parcel distribution could involve a higher number of trips. NH⁵ points to the transport statement for the original planning application forecasting 183 two way movements and 62 arrivals during the PM peak hour for parcel distribution, and I have not seen evidence to the contrary.
13. It is drawn to my attention that the proposal would generate less traffic than a previously approved⁶ retail development at the appeal site. Be that as it may, that proposal was also subject to a Grampian condition that prevented the use occurring until similar road improvements had taken place. On that basis, I am not convinced that the planning history of the appeal site provides a sound justification for allowing the approved storage and distribution scheme to proceed without complying with condition 3.
14. The appellant clearly had knowledge of this planning history and condition in relation to the retail approval⁷. Even if they are unfamiliar with the specific works cited as is stated, the wording of condition 3 allows for an alternative scheme of infrastructure improvement works to be agreed.
15. The imposition of condition 3 is consistent with policies IN1 and TR1 of the Swindon Borough Local Plan 2026, March 2015 (LP). The former requires development to make appropriate infrastructure provision and identifies a number of ways that might be done, including the mitigation of the impact of development on existing infrastructure. The latter encourages the safe and efficient movement of people and goods, in part by enabling a reliable and efficient transport network that minimises congestion.

³ Letter from NH dated 21 March 2023

⁴ Statement of Case – Highways, prepared by Entran

⁵ Consultation response to application S/21/1986 dated 3 February 2022

⁶ Planning reference S/16/0505/IH dated 19 October 2017

⁷ Paragraph 3.2, Appellant's Statement of Case - Highways

16. In broad terms, the imposition of the condition also aligns with the approach encouraged by paragraph 110 of the National Planning Policy Framework (the Framework) to ensure that any significant impact from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. Moreover, paragraph 111 of the Framework confirms 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. In the absence of mitigation works to address the peak hour congestion on the A419 off-slip, both of these circumstances would apply to the appeal proposal.
17. Therefore, on the evidence before me, I find that in the absence of mitigation, the development would exacerbate the existing highway situation and would unacceptably increase the risk to highway safety. Consequently, it remains necessary to ensure that sufficient mitigation is in place to avoid unacceptable effects arising from the development. Condition 3 refers to a specific scheme that the NH consider would do so, but also provides for an alternative to be agreed. On this basis, condition 3 would fulfil both the tests of necessity and being reasonably related to the development.
18. The appellant contends that condition 3 is not enforceable based on the Council's lack of enforcement action in relation to alleged breaches of similar conditions imposed on a number of other nearby development sites. However, I cannot agree with this deduction. The wording of the condition is precise insofar as a drawing outlining the necessary works is identified and there is a clear trigger by which it may be judged whether a breach had occurred. Hence, in my view it has the necessary components whereby it would be enforceable. Whether the Council would consider it expedient to take enforcement action in the event of such a breach is a separate matter and is not one that requires any commentary from me as part of this determination. However, the discretionary nature of planning enforcement powers does not of itself render the condition unenforceable.
19. Planning Practice Guidance (PPG) has specific advice⁸ as to when conditions can be used relating to land not in control of the applicant. It refers to the use of Grampian conditions prohibiting development authorised by the planning permission or other aspects linked to the planning permission (eg occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). It goes on to say that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. This is a high threshold and there are a number of relevant factors in this case whereby it is not shown that there are no prospects at all of the action being performed.
20. Firstly, an improvement scheme for the works at the A419 Blunsdon junction northbound off-slip that is acceptable to NH exists. Indeed, as highlighted by the appellant, it features in other similar Grampian conditions for development in the vicinity, including at TGV. Although the evidence before me suggests that the works ought to have already taken place, there have been delays. NH most recently indicate that the expectation is that the works will commence in

⁸ Paragraph: 009 Reference ID: 21a-009-20140306

June 2023. Furthermore, the wording of condition 3 allows for an alternative scheme for mitigation works to be agreed.

21. Secondly, the mitigation works would need to take place on highway land, and NH and the Council are clearly supportive of such works proceeding. Thirdly, the condition does not specify who should undertake the works, simply that they must be done prior to the first use of the approved storage and distribution centre. This does not rule out the appellant from having any agency in the matter. Consequently, these factors would point to the reasonableness of the use of a Grampian condition in the circumstances of the present case.
22. That is not to say that I do not have sympathy with the predicament of the appellant, as in the context of strategic road infrastructure, the traffic movements generated by the approved development would be relatively modest. Nevertheless, it would unacceptably exacerbate a pre-existing problem which, in the absence of mitigation, would increase the risk to people using the highway. Therefore, it remains justifiable to place limitations on the development to avoid the traffic movements from the development making the situation worse.
23. As mentioned at the outset, there are limitations to the scope of the section 73 procedure, in that I am able to consider only the question of conditions for a development already approved. It may be the case that other solutions exist outside of this process that would better address this predicament. However, I must make my determination within the confines of the procedure open to me.
24. The Council suggest an amended wording to the condition such that it would allow the occupation of the development at an earlier stage in the delivery of the identified improvement scheme. Rather than the completion of the works being the trigger, it is suggested that this could be substituted with the 'signing' of a legal agreement with NH for the improvement works. To my mind, such a trigger would be problematic as it would undermine the purpose of the condition to avoid the additional unacceptable risk identified.
25. I am persuaded on the evidence before me that it is necessary for improvement works to take place on the A419 Blunsdon junction northbound off-slip prior to the approved development generating traffic movements. Although condition 3 is a somewhat blunt mechanism, in the absence of alternative measures to secure the delivery of the infrastructure, the sequence of actions required by the condition would achieve that objective. I appreciate that this has consequent practical difficulties for the appellant, not least in securing funding for the development. Nevertheless, the fundamental purpose underpinning the condition relates to safeguarding highway safety, which must take priority over the frustration and inconvenience experienced by the appellant in bringing the approved development forward.
26. Accordingly, I find that the wording of condition 3 is relevant to the development and still serves a useful planning purpose in that it remains necessary to safeguard the highway safety of the operation of the A419 trunk road. Furthermore, whilst I accept that circumstances are not ideal, I am satisfied that it remains reasonable to ensure that highway improvements to the A419 Blunsdon junction northbound off-slip are carried out prior to the operation of the approved storage and distribution centre. Moreover, the

wording of the condition is sufficiently precise as to the requirements and trigger such that it would be enforceable.

27. Therefore, it meets the requirements for planning conditions set out in paragraph 56 of the Framework. There is a significant possibility that the removal of condition 3 would exacerbate the existing constrained situation on the A419 to the detriment of highway safety, thereby increasing risk of considerable magnitude to users of the highway. As such, it would be contrary to policies IN1, TR1 and TR2 of the LP which in combination and amongst other matters, seek to mitigate the impact of development on existing infrastructure and enable a reliable and efficient transport network which minimises congestion.

Conclusion

28. For the reasons given above I conclude that the appeal is dismissed, and the condition retained in its present form.

Helen O'Connor

INSPECTOR