



Appeal Decision

Site visit made on 30 May 2023

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2023

Appeal Ref: APP/F1610/W/23/3315125

Scrap Haulage Yard, Fosseway, Lower Slaughter, Gloucestershire GL54 2EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Peter Gilder against the decision of Cotswold District Council.
- The application Ref 22/01199/FUL, dated 1 April 2022, was refused by notice dated 19 August 2022.
- The application sought permission for “redevelopment of existing scrap yard and haulage depot to create electric car charging service station and associated works”, without complying with a condition attached to planning permission granted under appeal reference APP/F1610/W/20/3248674, dated 9 December 2020 (following refusal under application reference 18/01681/FUL).
- The condition in dispute is No. 24 which states that “The parking spaces approved as part of the development hereby permitted shall be used for electric vehicle charging only and shall not be used for general parking purposes or parking by internal combustion engine vehicles”.
- The reason given for the condition is to “provide an appropriate control of the development and avoid an adverse effect” and so “it is used only as a vehicle charging station and not as a long-stay car park or destination in its own right”.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council reasons for refusing to remove condition 24 were that it was more significant to the nature of the development than would be appropriate for consideration as a minor material amendment under Section 73 and would result in a development fundamentally different to the approved scheme. They also stated that a new planning application would be required so the proposal could be assessed against all relevant policies.
3. Recent case law¹ concluded that the scope of section 73 of the Act is not necessarily limited to minor material amendments. My consideration of this appeal must be based on present circumstances and the details submitted with the appeal. It is not confined to the original reason given for imposing the condition when permission was granted.

¹ Armstrong v SSLUHC, January 2023.

4. In their reasons for refusing to remove condition 24 the Council did not specify any development plan policies. Notwithstanding this, the policies which were relevant in granting the original permission are still relevant in considering the acceptability of removing condition 24. The reason the inspector imposed condition 24 is given above. Within the appeal decision it is clear that the condition 24 related to preventing any unacceptable increases in traffic movement on the surrounding road network and to ensure the safety of pedestrians, cyclists and other road users. Under this appeal, I need to consider whether condition 24 is reasonable and necessary and whether any harm would arise from granting planning permission without it, having regard to relevant policies.
5. Removing condition 24 would not necessarily mean the site stopped being an “electric car charging service station”. Consequently, removal of the condition would not result in a fundamental conflict with the description of development for which the original permission was granted. Therefore, I do not consider the Finney² judgement to be applicable in this case.

Main Issue

6. Having regard to the matters laid out above, the main issue is the effect that removing condition 24 would have on the safety of users of the highway.

Reasons

7. The original planning permission was granted, with conditions, on the basis of details assessed by the inspector at an enquiry. The details, including Transport Technical Notes, allowed the inspector to assess material considerations such as the likely users of the site, their starting point and destination, their numbers and length of stay. The inspector was satisfied with the methods used for assessing trip generation and calculating the proportion of new trips. The inspector concluded that the development of the site as an electric vehicle (EV) charging station would not result in a significant number of new trips on the road network or in the site becoming a destination in its own right. That conclusion was reached on the explicit basis of the site being for the charging of EVs, with facilities for drivers and passengers of EVs to use while charging took place.
8. Removal of condition 24 would allow internal combustion engine (ICE) vehicles to be parked at the site, as well as EVs to be parked without using the charging facilities. The appellant claims that it is not envisaged there would be significant numbers of ICE vehicles using the facility. However, I have been provided with no evidence to substantiate this claim or any information which would allow an adequate assessment of likely users, origin, numbers or length of stay, on the basis of allowing ICE vehicles to be parked on site.
9. Consequently, despite the lack of objection from the Council Highways consultee, I have insufficient information to enable me to rule out the possibility that removing condition 24 would result in a significant increase in trips on the local road network and significantly more intensive use of the access. This increase in vehicle numbers could have a significant impact on highway safety.

² Court of Appeal, John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, 2019.

10. Those using the site to charge EVs, especially with fast charge, are very likely to remain on site and use its facilities. The length of stay and likelihood of leaving the site would therefore be limited naturally by the charge time. By contrast, the removal of condition 24 would allow for drivers of both ICE vehicles and EVs to use the site for general parking. This would remove the built in time scale associated with charging meaning the site could be used for longer term parking.
11. The appellant states that a future operator of the site would look to control the length of time ICE vehicles could park on site to avoid losing money from EV charging. Despite this, no mechanism has been proposed for controlling the length of parking. The appellant also claims that removing condition 24 would not remove any of the charging points. They have not provided a layout to demonstrate how this would be achieved or how the proportion of spaces used for general parking would be controlled.
12. The route from the site into local towns and surrounding Cotswold tourist attractions is unsuitable for pedestrians and cyclists. Any increase in the use of this route resulting from people walking or cycling to and from the site, where they have parked, would be detrimental to the safety of those individuals and other highway users. Avoiding any such increase was a key part of the inspectors reasoning for imposing condition 24. Removing condition 24 is likely to result in use of the site for general parking and hence an increase in pedestrians and cyclists using the surrounding roads.
13. Consequently, the proposal would not provide safe access for all potential users and could result in an unacceptable risk to the safety of pedestrians, cyclists and other road users. I cannot therefore be confident that the proposal would meet all of the requirements of Policy INF4 of the Cotswold District Local Plan (adopted 2018), which seeks to secure highway safety for all users.
14. The site shares an access from the highway with a dwelling and a builders merchant, but these have their own separate site areas with distinct boundaries. Condition 24 does not restrict use of the access, it only restricts parking within the appeal site. Therefore, the condition does not prevent ICE vehicles from using the access and then parking outside of the appeal site, within the boundaries of the dwelling and the builders merchant. If an ICE repair and service van, or a delivery vehicle, needed to access the site to undertake work or make a delivery, they would not be considered to be 'parked' at the site, so the condition would not prevent such activities.
15. The vast majority of EV vehicles are identifiable as such from the vehicle exterior (name, model and/or markings etc). In addition, it would be very easy to identify if vehicles were attached to a charging station. As a result, it would be a relatively straightforward task to identify if any ICE vehicles, or indeed any EVs not using charging facilities, were parked on site. Consequently, it would be possible and practical for compliance to be monitored and any breach of the condition to be detected. This means condition 24 is enforceable.
16. I conclude that condition 24 is reasonable, necessary, and enforceable. It is also relevant to planning, relevant to the development to be permitted, and precise and reasonable in all other respects. Without condition 24 there is a risk that the development would have an unacceptable harmful impact on the safety of users of the highway.

Other Matters

17. Neighbouring residents are entitled to seek professional advice in making their representations. I have no details regarding an application for the building of a hotel on the wider site. This appeal has been considered and determined on its own merits and impacts on the basis of the information provided.
18. I have been presented with no substantive evidence that allowing drivers of ICE vehicles to access the site would convince them to change to an EV any sooner. Details of restrictions at other charging sites has not been provided and any consideration of commercial interest and competition law is outside of the scope of this section 78 appeal.

Conclusion

19. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that it is reasonable and necessary to retain condition 24. Therefore, the appeal should be dismissed.

Helen Davies

INSPECTOR