



Appeal Decision

Site visit made on 21 March 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2023

Appeal Ref: APP/A0665/W/22/3307841

Land off Heath Lane, Wincham, Northwich CW9 6DB

- 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 Mr Z McCombie of McCombie Construction Ltd against the decision of Cheshire West and Chester Council.
- The application Ref 20/03447/OUT, dated 18 September 2020, was refused by notice dated 17 June 2022.
- The development proposed is for Construction of 8no. industrial/office units and associated roads and parking.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is in outline with all matters reserved. I therefore regard the submitted plans showing the layout and design of the development on the site as illustrative only. Nonetheless, the plans provide a useful guide as to how the site could be developed.
3. The application was originally submitted for the construction of 14no. industrial/office units formed of 4 buildings. During determination of the planning application the proposal was amended, and the number of commercial units was reduced to 8, formed of 2 buildings. I have therefore used the agreed amended description, as this was the basis upon which the Council determined the application and so have I.
4. The application form also states the types of development would be Class B2 (general industrial) and B1(a) (office other than a use within Class A2) uses. Under the amendments made to the Use Classes Order¹, which came into force on 1 September 2020, a new broad "Commercial, business and service" use class (Class E) was created that incorporates the previous Class A uses, some uses within Classes D1 and D2, and business uses under Class B1. The new Class E has some 8 categories. However, Class B2 uses remain unchanged and does not fall under the new Class E.
5. The appellant's appeal statement also clarifies that the outline application seeks permission for the new Class E(g) which includes use classes E(g)(i) office, E(g)(ii) research and development of products or processes, and E(g)(iii) any industrial processes (which can be carried out in any residential area without causing detriment to the amenity of the area). There is no further

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which came into force on 1 September 2020.

mention of any proposed Class B2 uses. The Council's suggested conditions also refer to restricting the use of the buildings to the three categories of Class E uses, to which the appellant subscribes. I have therefore determined the application on the basis the proposal would be for the Class E uses 'Commercial, business and service' as described above.

Main Issues

6. The main issues in this appeal are:

- The effect of the proposed development on highway and pedestrian safety, and
- The effect of the proposed development on the living conditions of existing occupants of neighbouring properties with regard to noise and disturbance from vehicles using the site.

Reasons

Highway safety

7. The 0.6 hectare appeal site comprises ruderal vegetation and scrub, an area of hardstanding, and a small single storey brick building. Another building has already been demolished. According to the application form the site was last used for commercial storage. The site sits adjacent to a scrap metal yard accessed off Chapel Street. There are residential properties in very close proximity to Heath Lane, namely 58 Chapel Street (No.58) and 2 Heath Lane (No.2).
8. According to the submitted indicative plans and 3-D visuals, the proposal would comprise 2no. two storey buildings each divided into 4 units to create 8no. industrial/commercial units. Two different indicative floor plans are shown: one with a ground floor workshop and upper floor offices, the other with a double-height workshop and fewer and smaller offices. The proposal would use the existing access off Heath Lane, an unmade narrow road, which in turn is accessed off Chapel Street, which is a main route through Wincham. On-site parking would be provided, accessed via the site entrance off Heath Lane.
9. The site lies within the Council's designated 'Wincham Regeneration Area'. Policies N2, N2.C and N4 of the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies Document (the 'LP2') support employment development in this area, including office and industrial uses, subject to a number of criteria. These include, amongst other things, that impacts on neighbouring residents are minimised and mitigated where relevant, that links to public rights of way are incorporated in the design, and that traffic generated is safely and satisfactorily accommodated on the highway network and the movement of Heavy Goods Vehicles (HGVs) is managed, where applicable. The site also forms the north part of a mixed residential development for up to 950 dwellings and 2500sqm of commercial facilities, with employment uses on land off Chapel Street. I am told the planning permission remains extant but has not been implemented and no reserved matters application has been submitted. I have not been provided with any plans showing proposed layouts or the relationship or context with the appeal site.

10. Policy T5 seeks to ensure safe provision for access to and from the site is made for all users. Policy STRAT 10 of the Cheshire West and Chester Local Plan (Part One) ('the LP1') seeks to ensure that additional traffic can be accommodated safely and satisfactorily.
11. Heath Lane is a narrow, unmade, single-width track with no footways or street lighting. It varies in width from about 4.1 metres to about 5.8 metres at its widest. Furthermore, Heath Lane is a designated Public Right of Way (PRoW), which I saw clearly indicated by the signpost at the junction with Chapel Street. Therefore, Heath Lane is shared by pedestrians and vehicles.
12. For industrial/office development the Highway Authority advises a minimum 7.3 metre wide road, with a 2m wide footpath parallel to the highway on both sides of the carriageway. Heath Lane is therefore substandard in width for both vehicles and pedestrians.
13. There are a number of residential properties at the far end of Heath Lane who use it for vehicular access, before gates bar further progression along Heath Lane. There are also a substantial number of residential properties in the vicinity of the site, including the Ashwood Park residential development opposite, who have easy pedestrian access to the PRoW. As I used Heath Lane I saw that vehicles and pedestrians had to pass with care, as did cars. Along the first section of Heath Lane, from its junction with Chapel Street as far as the site entrance, the width of Heath Lane is physically constrained. On the eastern side there is a brick boundary wall around the large existing industrial unit and on the western side there are the side walls and garden boundary fences of the residential properties No.58 and No.2, as well as a boiler flue protruding from the side wall of No.58. I saw cars progress down Heath Lane and saw there would be little room for larger vehicles to comfortably pass. Whilst the route is straight and offers generally good intervisibility for pedestrians and vehicles, this would not be the case in the dark with no footpaths or streetlighting.
14. The appellant has sought to estimate existing and proposed vehicle movements and make comparisons, using TRICS database and the HGV movements permitted under the Operating Licence that was granted for the site. Whilst the application form does not list operating hours, the appellant's Transport Statement² refers to proposed operating hours as between 07:00 – 18:00 but it is not clear if this would be 7 days a week.
15. In terms of existing uses the appellant refers to the flexible commercial use for storage and distribution that the small building benefits from under Class R³. The appellant subsequently converted the building to a distribution/plant hire/*sui generis* use class in November 2021. Whilst I saw some signage on the side of the building to this effect, I did not see any plant or machinery on the site nor did the site appear to be in active use at the time of my visit with either vehicles or people.
16. The site was granted a Goods Vehicle Operating Licence (the Operating Licence) in May 2022 for 2no. 32 tonne rigid HGVs to operate from the site (which forms part of the appeal site). Conditions restricted this to 14 HGV

² Prepared by SCP dated August 2022 (Doc ref: PT/21044/AS/01

³ Of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

movements per day into/out of the site during operating hours⁴, combined with other light vehicle movements. Operating Licences have a different remit to a planning application. Nonetheless it indicates that HGVs could use Heath Lane, from the junction with Chapel Street to the site, without any improvements being made to Heath Lane or the junction. I am informed that a new agricultural access has been created so that agricultural traffic need not use Heath Lane, but I have scant details of this.

17. The appellant's data suggests the existing and permitted uses would generate daily 9 Light Vehicles in and 8 Light Vehicles out, plus 14 HGV movements in and out. The proposed use would have 48 Light Vehicle movements in and 47 out and 1 HGV or operating goods vehicles (OGV) a day. This would result in a net trip generation of 39 daily Light Vehicles movements both in and out – more than at present – and a reduction in all HGVs as none are estimated to use the site, taking into account the size of the units and their start-up nature. The appellant's figures equate this to 11 daily additional two-way vehicles trips in the AM and PM peak hours. This would approximate to 1 additional vehicle every 5-6 minutes.
18. Whilst accident data shows there have not been accidents, I take this with some caution as the existing/permitted uses are limited to a single business, which was only granted in November 2021, and it is unclear whether HGVs have actually been operating from the site under the Operating Licence.
19. The appellant is offering to make amendments to the layout of Heath Lane as some land near the junction with Chapel Street and alongside the large existing building on the eastern side of the lane fall under his control. As a result, the appellant would widen the access near the junction to about 6.4m and provide a tactile paving crossing point. The carriageway would then vary in width and narrow down to 5.2m-5.5m for much of its length, with a short section beside the existing industrial building narrowed to 4.9m wide. A footway would also be installed along the eastern side of the lane alongside the large existing building. Near the junction the new footway would be 2m wide, then would narrow to a width of 1.2m as it follows the side of the building for about 30m, before widening again to 2m. A continuous footpath, albeit of varying width, would help segregate pedestrians and vehicles and provide some betterment. Nonetheless, the widened carriageway and footpath would both still be substandard and contrary to the Highway Authority's requirement for industrial/office development.
20. The appellant's submitted extracts from the national 'Manual for Streets' show that a 4.1m width road is sufficient for two cars to pass, a 4.8m wide road sufficient to allow a lorry and a car to pass, and a 5.5m width would allow two lorries to pass. In each example, passing vehicles are shown very close together, almost touching. The Manual for Streets is only guidance, not a recommendation, and is intended for designing residential streets, not industrial/commercial premises. The appellant's submitted swept-path analysis shows two passing 7.5 tonne lorries or a 12m rigid HGV and a large car, but they can only just pass each other.
21. As a further improvement, the appellant proposes to install a 300mm wide strip along the western side of Heath Lane alongside the existing residential

⁴ Conditioned to be 0700 – 1800 hours Monday to Friday, 0700 – 1300 hours on Saturdays and no operations or movements on Sundays or Public Holidays.

- properties No.58 and No.2. However, this would provide limited protection to anyone exiting the side door or the protruding boiler flue.
22. The number of pedestrians needing to pass at any one time may well be low and the narrow footpaths may still enable pedestrians to pass with care, or just wide enough for an adult with pushchair and walking toddler, as illustrated by the appellant's Manual for Streets extracts. However, the submitted examples are for when designing residential environments. Pedestrians would be walking right up adjacent to the existing industrial building, and with the footpath being substandard, they would have little room to step away from the carriageway as 2 vehicles try to pass each other, particularly if drivers unfamiliar with the site turn into Heath Lane without realising its limited width and encounter a vehicle and pedestrians as they turn off Chapel Street. There would be little room for error.
23. From my site observations, the increased use of a substandard Heath Lane by vehicles would not provide a satisfactory experience for pedestrians using the PRoW. The proposal would create an intimidating environment for pedestrians and increase the likelihood of vehicle/pedestrian conflict. It would also not be ideal for vehicles encountering each other at the junction or having to pass each other later on. I am not satisfied that the proposed use of Heath Lane, even with the appellant's proposed alterations, would make a suitable access route for the appeal proposal. From the substantial number of comments from third parties and Wincham Parish Council I see that others share concerns about the use of Heath Lane and pedestrian safety on the PRoW.
24. The appellant refers to the lack of footway at the existing and established Cosgrove Business Park elsewhere in Northwich. As far as I am aware there is no PRoW running through the site. Hence this is a different context and offers no meaningful comparison in this instance.
25. The appellant is willing to have a condition restricting the uses to Class E to reduce the likelihood of HGVs and also restrict the size of visiting vehicles to 7.5 tonnes and includes a number of appeal decisions where Inspectors have imposed conditions on the length of vehicles, although I see they are for totally different types of development and different contexts. There is already a restricted order on Chapel Street, but this does not prevent large HGVs accessing Heath Lane. This would make enforcing a planning condition in this instance difficult. I also saw there were a number of other commercial/industrial premises along Chapel Street to the east of the site and 7.5 tonne vehicles could travel along Chapel Street to access them.
26. The HGVs permitted under the Operating Licence were in connection with a single business. In contrast, the proposal would be for 8 separate and speculative commercial/industrial units, each with their own business arrangements and associated vehicles coming and going along Heath Lane to and from Chapel Street.
27. There is planning permission for 6 dwellings to the west of Heath Lane. The plans I have been given show there would be a footpath through the new housing development to link with Heath Lane further along. The housing has not been built and I have not been given any timeframe for its development. Furthermore, the Council advises that any official diversion of the PRoW through the new housing would be unlikely to be accepted by the Council's Rights of Way Officer as it would be less convenient, narrower and less direct.

Indeed, LP2 Policy DM37 seeks to ensure that development incorporating or adjacent to PRow must protect it wherever possible, enhance or extend it, and that re-routing a PRow should be avoided, but would be supported if the alternative route is acceptable. In any event, I have not been presented with any application to divert the PRow and until such an application has been successful, which seems doubtful at this stage, the PRow remains along Heath Lane for the purposes of my considerations.

28. To conclude on this matter, the fact remains that there will be an increase in vehicle movements along a track shared as a PRow that is already substandard in width. The proposed improvements would still render Heath Lane and the proposed footpaths substandard in width, to which the Highway Authority continues to object. Whilst on a standard highway network the increase in vehicle movements might not be material, for a single-width track immediately adjacent residential properties that is shared with pedestrians as part of the PRow, the impact of additional vehicles would be more significant. I am not satisfied that the proposed improvements would lessen the conflict with pedestrians and vehicles along Heath Lane. Hence the proposed use of Heath Lane to serve a new industrial/commercial/office use would adversely affect highway and pedestrian safety. Accordingly, the proposal would be contrary to LP1 Policy STRAT 10 and LP2 Policies T5, N2 and DM37, whose aims are outlined above.

Living conditions

29. There are residential properties in close proximity to Heath Lane. The side walls of the dwelling No.58 and its tall boundary fence to the rear garden are aligned parallel to Heath Lane close to its edge. There is no verge or pavement between the property and the road. There are no windows on the side elevation of No.58 but there is a side door that opens directly over the carriageway. No.2 directly faces onto, and is accessed off, Heath Lane, but the dwelling is set back with a driveway and low boundary walls in front.
30. Vehicles already use Heath Lane to access the residential properties at the far end of Heath Lane. However, these would most likely be cars, small vehicles and occasional delivery vehicles. The proposal would see an uncontrolled increase in vehicle movements of cars, vans and lorries (even if restricted to 7.5 tonnes) associated with 8 separate speculative businesses. Bigger vehicles would take up more of the width of Heath Lane and hence would drive closer to the residential properties. If two vehicles passed in front of the residential properties, then this would exacerbate matters taking noise and vibrations closer to the properties, as vehicles edged past each other and pedestrians. The proposed 300mm wide hard strip alongside the boundary wall of the properties would not give any meaningful separation. There would also be more vehicles turning in/out of the junction with Chapel Street.
31. I have had regard to the Noise Impact Assessment, a Technical Note on Noise, and a Noise Statement (all prepared by consultants e3p) submitted by the appellant. The main concern of the Council's Environmental Protection Unit relates to nuisance from 'frequent short-lived noise events with high L_{max} values'.
32. Resurfacing Heath Lane would help reduce the noise from vehicle tyres and engines and from any clanking as vehicles negotiated the uneven surface. The Noise consultants consider there would be a betterment to the current situation

overall, including the lack of HGVs that could otherwise operate under the Operating Licence. They advised that when considering road traffic sound assessments for new residential development, only night-time impacts of L_{Amax} events are considered for bedrooms. The consultant concludes that as no night-time operations are proposed, such an assessment is not considered necessary in this instance.

33. The overall level of noise is one factor and there does not appear to be concerns as to these levels. However, there would be 'spikes' of sound levels as each vehicle passes by. There would be an increase in vehicles passing close to the side wall of the property No.58, which would pass even closer when leaving the site and exiting from the junction onto Chapel Street. When two vehicles pass, they would have to edge pass each other more carefully and slowly to ensure they do not hit the adjacent residential property. Even if Heath Lane is resurfaced, there would still be the frequent noise of passing vehicles, often in low gear as they enter/leave Heath Lane. The appellant calculates 1 additional vehicle passing every 5-6 minutes. This would be an almost continuous noise and disturbance in very close proximity to rooms within the property and to the outside spaces. There would also be vibrations, particularly from larger vehicles.
34. I am not satisfied that it has been adequately demonstrated that the increase in the number of vehicles and their frequency during a working day, together with their passing in close proximity to the properties, would not result in poor living conditions for occupiers of the affected residential properties.
35. Accordingly, the proposal would be contrary to LP2 Policies N2.C and DM2 and LP1 Policy SOC5. Collectively these seek to ensure that the impact on neighbouring residents is minimised and mitigated, and the quality of life and health and well-being of residents is safeguarded. It would also be contrary to the National Planning Policy Framework which advises that noise from development should avoid giving rise to significant adverse effects on health and quality of life, and the national Planning Practice Guidance which advises that a good standard of amenity should be achieved.

Conclusion

36. I acknowledge the site is part of a local plan allocation for a larger employment development and the proposed employment use would bring associated social and economic benefits. There would also likely be a reduction in the number of HGVs and agricultural traffic (potentially) using Heath Lane and according to the submitted evidence there would also be some net biodiversity gain. However, I do not find these benefits outweigh the harm that would be caused to the living conditions of nearby residents and to vehicle and pedestrian safety of users of Heath Lane and the PRoW from the substantial increase in traffic movements on Heath Lane and the noise and disturbance that would arise from this as a result of the proposed development.
37. The proposal would therefore conflict with the development plan when taken as a whole and this conflict is not outweighed by other material considerations as identified above. Therefore, for the reasons above the appeal should be dismissed.

K. Stephens INSPECTOR