
Appeal Decision

Hearing Held on 6 March 2024

Site visit made on 5 March 2024

by John Wilde C. Eng M.I.C.E.

an Inspector appointed by the Secretary of State

Decision date: 26 March 2024

Appeal Ref: APP/P4605/W/23/3331219

Kingstanding Shopping Centre and Kingstanding pub, Kingstanding Road, Birmingham B44 9HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 Lidl Great Britain Limited against the decision of Birmingham City Council.
 - The application Ref 2023/00657/PA, dated 31 January 2023, was refused by notice dated 11 May 2023.
 - The application sought planning permission for the clearance of the existing shopping centre and public house and the erection of a new build supermarket (Use Class Ea) as well as commercial units (Sui Generis) together with the creation of associated parking, servicing and landscaped areas and other associated works without complying with a condition attached to planning permission Ref 2021/05104/PA, dated 23 January 2023.
 - The condition in dispute is No 44 which states that: The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawings Location Plan PL-01 Rev A; Proposed site plan PL-03 Rev X; Proposed building elevation unit 1 & 2 PL-08 Rev K; Proposed building plan unit 1& 2 PL-12 Rev D; Proposed street scene elevations PL-07 Rev C; Proposed building plan PL-04 Rev C; Proposed elevations PL-06 Rev C and proposed roof plan PL-05 Rev C.
 - The reason given for the condition is in order to define the permission in accordance with policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Background

2. The existing permitted development for the food store would have an access that would allow vehicles to enter the development by turning left from Kings Road when approaching from an easterly direction. The current application that is the subject of this decision would result in a right turn option for vehicles arriving along Kings Road from the west as well as the approved left turn in option. The appellant therefore wishes to vary condition No 44 by replacing drawing PL-03 Rev X with drawing No PL-03 Rev W. The Council have concerns that this would have an unacceptable impact upon highway safety. It follows that the main issue is as shown below.

Main issue

3. The main issue is the effect that varying the condition would have on highway safety.

Reasons

4. The permitted supermarket would be located on the south side of Kings Road, a short distance from a large roundabout situated to the east. Kings Road is a dual carriageway and presently there is no gap in the central reservation, meaning that vehicles can only access and egress the site from the south (east to west) carriageway. The development as permitted would result in the creation of a gap in the central reservation that would allow vehicles to turn right out of the development but not right into it.
5. Vehicles approaching from the west wishing to turn right to access the development currently have the option of traversing the roundabout a short distance to the east and hence arriving back at the entrance to the development on the south (east to west) carriageway.
6. The appellants preferred option would however be the creation of a wider gap with the creation of a right turning lane for traffic approaching from the west, as shown on Drawing PL-03 Rev W. They make the point that this is not an unusual arrangement, that speeds are low and that traffic is relatively light. I also note that a Stage 1 Road Safety Audit undertaken in February 2023 made no mention of any potential vehicular conflict.
7. However, the introduction of a right turn in would inevitably result in conflict with vehicles turning right out of the development. Drivers exiting the development would have to assimilate whether or not there was a suitable gap in traffic coming from the east whilst at the same time ascertaining whether there was a vehicle attempting to turn right across them to enter the development. Also, there would be no form of priority system which would enable the drivers of the two conflicting vehicles to determine who has right of way.
8. Furthermore, whilst the bus stops to the east would be set back from the line of sight of drivers wishing to exit the site, a bus just starting to pull slowly out of one of the stops could potentially mask vehicles in the outer lane of the south carriageway.
9. It seems to me therefore that the introduction of the right turn in would undoubtedly cause an extra level of conflict, not present in the permitted development. The question that arises is whether or not there is a suitable alternative that would be both usable in respect of driver acceptance and as safe, if not safer, than the proposed system.
10. In this particular case, as mentioned earlier, there is an option for eastbound vehicles to drive around the Kings Road/Kingstanding Road roundabout and access the development from the east. This was the system employed in the previous iteration of the site when it was a shopping centre. This is a relatively short distance and the rules regarding right of way at roundabouts are well known and there are road markings in place to enforce this. I consider therefore that taking into account this short and satisfactory alternative, road safety would be unnecessarily and unacceptably prejudiced by the introduction

of a further type and level of conflict which would occur with the introduction of the right turn in.

Conclusion

11. In light of the above I conclude that varying condition No 44 by substituting drawing No PL-03 Rev X with drawing No PL-03 Rev W would have a negative impact upon highway safety. Conflict would therefore exist with policy DM14 of the Development Management in Birmingham Development Plan Document (December 2021) which requires, amongst other things, that any new development would not have an unacceptable adverse impact on highway safety. Conflict would also exist with paragraph 110 of the National Planning Policy Framework, which stipulates that a safe and suitable access to a site can be achieved for all users. It follows that the appeal should be dismissed.

John Wilde

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Miss Ruth Stockley of Counsel
Mr Jim Budd (SCP)
Mr Daniel Wheelwright (Rapleys)
Mr Robin Canning (Lidl)
Mr Joe Gaunt (Lidl)

FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Cowen
Mr Wahod Gul