



Appeal Decision

Site visit made on 23 July 2024

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/P4415/W/24/3341169

Lindrick Nursery, Worksop Road, Lindrick Dale S81 8AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Duncan Carrier of Carrier Landscapes Ltd against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref is RB2023/1132.
 - The development is described as: *the widening of existing access/access track, partial relocation of access track away from eastern boundary, formation of additional access tracks within the site, erection of building to house borehole equipment and erection of water tank.*
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Decision

1. The appeal is allowed and planning permission is granted for widening of existing access/access track, partial relocation of access track away from eastern boundary, formation of additional access tracks within the site, erection of building to house borehole equipment and erection of water tank at Lindrick Nursery, Worksop Road, Lindrick Dale S81 8AE in accordance with the terms of the application, Ref RB2023/1132, subject to the conditions in the attached schedule.

Preliminary Matters

2. As noted in the evidence before me and as found on site, some of the works described and as shown on the proposed plans have been undertaken. I have assessed the appeal on that basis.
3. The appellant has provided a Unilateral Undertaking (the UU). The Council has confirmed the acceptability of the planning obligations. The obligations restrict vehicles over a specific weight over a certain period, with a log kept and made available to the Council when requested.
4. The reason for refusal provided by the Council relates to the effect of the proposal on the highway as a result of intensification of the use of the site. The Officer Report discusses the effect of the new access on the highway. Therefore, it is considered that the other aspects considered under this development are acceptable to the Council. The decision notice however does not identify policies relevant to the reason for refusal. The written evidence undertakes an assessment of Policy CS14 in relation to the effect of the proposal on the highway. All other policies provided by the Council do not appear to relate to this matter and are therefore not determinative in this case. As such, I have assessed the proposal against the requirements of Policy CS14.

Main Issue

5. It follows that the main issue is the effect of the development on highway safety.

Reasons

6. The appeal site is located off the A57, near to Lindrick Dale. The A57 in this location is a single carriageway, 50mph route which contains a widened area adjacent to the appeal site which is utilised for parking by members of the public. It is noted that the Council do not view this area as a layby, and that cars should not be parked here. From the evidence before me, access to the site appeared to be from a narrow entrance point in the form of a simple metal gate typically found in countryside locations. The development has increased the width of the access at the point closest to the A57, which then narrows once within the site. The access further includes a bound tarmac surface at the access point, a sliding gate and timber fencing.
7. The National Planning Policy Framework (the Framework) notes that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety. Policy CS14 notes that the Council will work with stakeholders to make places more accessible through locating new development in accessible locations, and through the use of Transport Assessments which take into account current national guidance on the thresholds for the development proposed, amongst other things.
8. The evidence before me includes a highway technical note. This demonstrates that the access to the site hosts a large visibility splay in both directions along the A57 which would meet the current guidance in respect of the visibility plays in both directions, as noted by the Council. The Council further notes that the exercise undertaken in establishing this visibility splay is robust and in accordance with industry guidance.
9. Upon further analysis of this evidence, when exiting the site, users can see along the highway over a considerable distance in both directions. This would allow for users to exit the site safely once traffic has passed. When specifically turning right, users may have to wait longer due to the 50mph speed along the A57. However, as the A57 is a single carriageway in this location, and the vehicle would be located within the site, the exiting of vehicles from the site will not cause an unacceptable impact to highway safety.
10. In assessment of traffic entering the site, vehicles turning right into the access point may be required to wait on the A57 to enter the site, causing traffic to back up. However, as the A57 is a single carriageway road in this location, vehicles would only be required to navigate one lane of traffic to enter the site. This is not an unusual driving task. The large space created through the setback of the sliding gate away from the highway also provides a greater expanse of area for drivers to pull into from the highway. As such, there is greater flexibility for drivers pulling into the site.
11. The Council have provided accident data in their evidence. However, this is without any explanation. The evidence highlights that nine accidents have occurred in the area from 2019. However, the accidents are located a considerable distance away from the access point into the site and beyond the

extent of the visibility splays associated with this appeal. As such, this suggests that this access point was not a factor which contributed to these accidents.

12. Consequently, the widening of the access has improved the visibility for users when leaving the site and does allow for vehicles to undertake quicker movements into the site due to the large area available for vehicles to pull into. Whilst the number of vehicles entering and exiting the site will increase due to the business associated with the site from its previous use, this would not likely create such an intensification that would impede on highway safety, or the flow of traffic to such an extent which is considered harmful.
13. To conclude, the development would comply with Policy CS14. This policy requires developments to use Transport Assessments which take into account the national guidance for the threshold of development considered. The development would meet these criteria. In addition, after further scrutiny of the proposal, I find that the visibility from the site entrance allows users to have a clear visibility of the highway over a large distance. The single carriageway nature of the highway and the large run off area into the site also assist in allowing vehicles to enter and exit the site without causing an impact on highway safety, even with the greater vehicle movements created as a result of the nursery business on site.

Other Matters

14. Comments have been received from interested parties. Some comments note that no tree, ecology or bat surveys have been carried out and any light and noise generated at the site would have an impact upon these. From the evidence before me, lighting exists on the agricultural building which has been located in the site for some time. No further lighting is proposed. The Council's Ecologist has suggested a condition in respect of the angling and cowling of the lights which would alleviate this potential harm. This will be discussed further in my reasoning in the Conditions section of this decision.
15. The lawful use of the site is commented on by interested parties. From the evidence before me, the Council have established that the site and building can be used for agricultural purposes. Furthermore, the development considered under this appeal is for the development of certain points within the site and not the change of use of the land. It is not for me in the context of this appeal to rule on the lawful use of the site.
16. Interested parties have also raised the matter of land ownership. This is not a material consideration in the determination of a planning application. Further comments suggest that a Public Right of Way has been blocked through the creation of this development. However, there is no evidence to suggest that a Public Right of Way was in place, as noted by the Council. Anti-social behaviour has also been raised as a concern by interested parties, who have wished for bollards to be erected across the entrance of the site. However, this would impact on a vehicle turning into the site from the highway.
17. Representations were made to the effect that the human rights of a neighbouring occupier would be violated if the appeal were allowed. The objector states that the individual has a right to a private and family life. This is in respect of lighting which is utilised on the site. The Council have found that the development would not conflict with the development plan with regard to the living conditions of neighbouring occupiers. The Council have suggested

lighting conditions, and I will discuss these later in my decision. Taking this into account, I am satisfied that a grant of planning permission would not unacceptably interfere with the right to a private and family life and home. It is proportionate in the circumstances to allow the appeal.

Planning Obligation

18. The UU would serve to restrict vehicles over a specific weight over a certain period, with a log kept and made available to the Council when requested. It would secure the necessary restriction of vehicles of a specific weight. I consider that the measures in the Undertaking are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the NPPF.

Conditions

19. The Council did provide a specific list of conditions for my consideration in the event that the appeal was allowed. The appellant has stated that the conditions proposed are acceptable. However, these conditions have been amended to meet the six tests for imposing conditions and as such, I have consulted the parties on these and taken their responses into consideration.
20. As the development is retrospective, a statutory time condition is not required. A condition specifying the approved plans [1] is justified in the interests of certainty. A condition specifying the material of the access tracks [2] is necessary in the interests of character and appearance as this would be of a similar appearance to the existing access track.
21. Several conditions are required to protect the living conditions of the occupants of neighbouring properties. These include conditions which restrict general movements within the site [3] and those of a specific Maximum Authorised Mass [4] between certain hours of the day. With specific reference to condition 4, this condition has been amended in terms of the time and day of which vehicles of a certain mass are permitted on the site. In the suggested conditions presented by the Council, it was noted that there was a restriction limiting the use of the site on Sundays for larger vehicles. However, I consider this as unnecessary and unreasonable. As such, I have amended the condition to allow a period of time for the site to be used on Sundays by vehicles of over a 7.5 tonnes Maximum Authorised Mass. This would not be at a time of day where noise and disturbance would cause unacceptable harm to neighbouring occupiers.
22. A condition requiring the submission of details of the angling and cowling of all existing floodlighting to the Council [5] is necessary to protect the living conditions of neighbouring occupiers and reduce the effect of the development upon ecology.
23. Finally, a condition which requires the carrying out of the approved drainage details [6] is necessary in the interests of highway safety. This condition has been amended from the suggested wording provided by the Council. This suggested wording required the submission and approval of the drainage information to and by the Council. However, following on from the consultation between the parties, both parties have suggested that the information provided

is adequate and therefore, the condition should reflect the compliance with those details. In consideration of this matter, I find no reason to disagree.

24. A condition was suggested to restrict the use of the site and access to the public in the interests of protecting the living conditions of neighbouring occupiers. The application is for the widening of the existing access with a partial relocation of an access track, the formation of additional access tracks within the site, the erection of a building to house borehole equipment and erection of a water tank. The development only relates to these matters. This does not include the provision for public access. As such, this would not be relevant to the development being permitted.

Conclusion

25. For the reasons given above the appeal should be allowed.

J Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing numbers:
 - Proposed Site Plan (Dated 20 July 2023) (No Drawing Number given)
 - Entrance Layout (Drawing Number: 2302CAR-LIN)
 - 1:50 Cabin Plan and Elevation (No Drawing Number given)
 - 1:50 Water Tank Plan and Elevation (No Drawing Number given)
 - Entrance Drainage (Drawing Number: CL-LP-001 REV B)
 - Typical Soakaway Detail (Drawing Number: CL-LP-002)
- 2) The new access tracks and passing places shall be constructed in crushed rock.
- 3) Except in an emergency, no vehicle shall enter the premises except between the following hours:
 - 7am – 7pm on Mondays – Sundays
- 4) Except in an emergency, no vehicle of over 7.5 tonnes Maximum Authorised Mass, including heavy plant, shall enter or exit the site except between the following hours:
 - 8am – 5pm on Monday to Saturday; and,
 - 11am – 4pm on Sundays and Bank Holidays
- 5) Within 3 months of the date of this decision, details of the angling and/or coving of all existing floodlighting on the building shall be submitted to the Local Planning Authority, and the subsequent approved details shall be implemented within 3 months of their approval. No additional lighting shall be installed on site without prior written approval of the Local Planning Authority.
- 6) Within 3 months of the date of this decision, the approved access drainage details (Drawing No: CL-LP-001 REV B and CL-LP-002) shall be implemented and then retained in working order for the lifetime of the development.