



Appeal Decision

Site visit made on 25 May 2025

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 June 2025

Appeal Ref: APP/F2415/W/24/3354605

Land Adjacent to Welham Lane, Great Bowden, Leicestershire LE16 7UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Annie Wareham against the decision of the District of Harborough.
 - The application Ref 23/01115/FUL was approved on 19 December 2023 and planning permission was granted for a 'Change of use of land to dog walking facility with associated parking,' subject to conditions.
 - The condition in dispute is No.7 which states that: 'Prior to first use of the development hereby permitted the full detailed design of the proposed off site highway works (access/ passing bay surfacing and verge works adjacent to the access) shall have been submitted and agreed in writing with the Local Planning Authority in consultation with the Local Highway Authority. The approved scheme shall then be implemented in full before use of the development hereby permitted. Thereafter the access/ passing bay and verge shall be maintained in perpetuity.'
 - The reason given for the condition is: 'To mitigate the impact of the development, in the general interests of highway safety and in accordance with the National Planning Policy Framework (2023).'
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Ms Annie Wareham against the District of Harborough. This application is the subject of a separate decision.

Procedural matters

3. I note that the Council and the Appellant in their appeal documents reference the paragraphs of the National Planning Policy Framework 2023 (the Framework). Since the submission of the appeal, the 2023 version of the Framework has been superseded by the 2024 version which was published on the 12 December 2024. The wording of the relevant paragraphs of the new Framework remain unchanged from the 2023 version (except for new paragraph numbers), and therefore did not require to be reassessed by either party in relation to this appeal. Additionally, this 2024 version of the Framework was amended on 7 February 2025 to correct cross references to paragraph 155 and for the avoidance of doubt is not intended to constitute a change of policy. As such, I have considered the appeal on this basis and refer only to the updated 2025 Framework within my decision.
4. This type of appeal that seeks the deletion of a condition means that the original grant of planning permission is opened for re-consideration in its entirety with the

initial grant of permission therefore being at risk. Having reviewed the application, I have no reason to dispute the opinion of both parties that the proposed development is acceptable in principle (without detailed considerations) and is made in accordance with the Development Plan, having considered its policies and any other material considerations. Taking this into account, I will therefore only consider the elements in dispute which revolves around highway safety, any harms and mitigatory measures, and whether a condition is appropriate and made in accordance with Paragraph 57 of the Framework and the National Planning Policy Guidance (NPPG).

5. I note that the Appellant's Statement of Case (SoC) refers to 'Circular 11/95: the use of conditions in planning permissions.' It is noted that this Circular with the exception of Appendix A (model conditions) has been cancelled and superseded by the NPPG. For the avoidance of doubt, I have only referred to the current relevant guidance that is in place during this determination of this appeal.

Background

6. The appeal site consists of a field of approximately 2.1 acres that would be used as a formalised dog walking area that customers would pay to utilise. This would be undertaken by an online booking system which allows a 5-minute gap between bookings. The field can accommodate twelve dogs at any one time and there is a car parking area provided for six vehicles. The use would be accessed from an existing farm access along Welham Lane.
7. Welham Lane is a rural road with no footpaths or street lighting, which for much of its length is a single car width carriageway where traffic can travel in both directions. Whilst the speed of the road is set at the national speed limit, traffic is generally slow moving given the narrow width of the road that does not allow simultaneous two-way flow of vehicular traffic. This means that there is the need to exercise caution if encountering oncoming vehicles, pedestrians, horse riders and agricultural machinery where vehicles will need to pull over momentarily to allow vehicles in the opposite direction to pass. On each side of Welham Road there are earthen bunds along the road edge which mean that verges are not able to be driven over to allow oncoming vehicles to pass, meaning vehicles would need to reverse for long distances so that they can pull over to give way to oncoming vehicles.
8. Welham Lane terminates for vehicular traffic a short distance after the appeal site entrance where there is a pedestrian bridge over Langton Brook. As such, vehicles would only travel from the A6 in a northerly direction to the appeal site. The A6 is approximately 1.1 miles (vehicular route distance) from the appeal site. Welham Road provides access to agricultural fields and farms, and contains occasional wider sections of roads to provide passing points if vehicles encounter oncoming traffic or the occasional agricultural access can also provide a passing place.
9. On my site visit I also noted parked vehicles along some of these passing areas particularly just after a bend in the road where Welham Lane runs from an east-west direction to the north-south direction heading towards the appeal site. It appeared that cars parked along this section were accessing the Public Rights of Way to walk dogs, walk, and according to appeal documents, horse riders also frequent this area. As noted in the Local Highways Authority's (LHA) Statement of Case (SoC) if on the approach to the appeal site that an oncoming vehicle is

experienced, the vehicle would need to reverse to an access approximately 300 metres away, or 500 metres away. I appreciate that the road conditions I experienced on my site visit was only a snapshot of the road at this particular time, however I have also considered the evidence submitted by both main parties and in light of this, I am satisfied that what I saw represents typical conditions.

10. I also acknowledge comments in the Appellant's Statement of Case (SoC) that there is no formal recording of accidents along Welham Road. However, this does not mean that there are no accidents or records of 'near misses' from day to day usage of the road between all road users which have not resulted in calls to the police or formal accident logs. Accordingly, the absence of accident data does not in itself mean that accidents have not occurred, near misses, or indeed that a carriageway is 'safe.' Whilst the road conditions appeared satisfactory for the current use and operation there were a number of deficiencies present.

Main Issue

11. The main issue is whether Condition No.7 meet the tests of conditions as prescribed by the Framework and the NPPG.

Reasons

12. Condition No.7 as described in the header to this letter is a pre-commencement of use condition that seeks details to be submitted for two elements, firstly the reduction of earthen bund adjacent the access to a height of no more than 60cm and secondly, the surfacing of part of an agricultural access 300 metres away so that it is suitable for all weather conditions and can be used by dog walking customers as a passing bay. The reason given for applying this condition is to mitigate harms caused to highway safety as a result of the proposed use in accordance with the Framework.
13. Paragraph 57 of the Framework, as well as the NPPG provides that conditions on grants of planning permission should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I turn to this assessment below.

Necessary

14. In order to pass the necessary test, a condition must be essential in order for the development to proceed, as without the condition, the development would not be appropriate and should be refused. The Harborough Local Plan (LP) Policy GD8 is a design-led policy that seeks that development ensures safe, efficient and convenient movement of all highway users; and LP Policy IN2 is a transport related policy that seeks that proposals seek to maximise the use and efficiency of the existing transport network and provide necessary mitigatory measures to deal with the impacts of the development.
15. The application involves the resurfacing of part of a nearby agricultural access so that it is available to use during all weather conditions. Whilst the LHA accepted that the existing access would be appropriate to cater for the proposed use in principle, the LHA has calculated that based upon the new use, that 6 vehicle parking spaces would be required, that appropriate visibility splays would be needed from the existing access, and that a passing place would be required. It

would appear from the Appellant's Statement that the Appellant seeks that the Council ignore the advice of the LHA due to the development being modest in size and in use. The recommendation from the LHA is written by an officer that is qualified in transport planning and I have confidence in the competence and reliability of information presented within their advice which gives an accurate consideration of the current and proposed situations with regards to highway safety. I have no reason to doubt these findings and have not been presented with any evidence that disputes these qualified opinions.

16. Whilst the use might be considered by the Appellant to be modest, it is a new business use within the rural area and its impacts upon the area have been assessed appropriately. As it is made clear in LP Policies GD8 and IN2 that in order to be in accordance with the development plan that development needs to consider impacts caused to the highway network, and if uses cause harm that they are required to provide means of mitigating this harm. The new use would introduce new vehicular movements to this part of the road network. Whilst I appreciate comments that the Appellant seeks to provide a 5-minute gap between bookings, this is a very small gap in time considering that users would need to put their dogs in cars, and likely other customers would arrive more than 5 minutes early so that they can unload their dogs in order to make full use of their allocated time. I am not convinced that the 5-minute gap sufficiently mitigates the concerns expressed around the use increasing the occurrence of cars meeting each other at this part of the road which will cause adverse impacts for highway safety. As such the principle of having an area which allows vehicles to pass each other in all weather conditions is necessary to make this development acceptable.
17. Turning to the visibility splays, the appeal documents highlight that the LHA and Council seeks that there are no obstructions above 60cm at each side of the access. This would mean that any earthen bunds above 60cm would need to be removed to allow adequate visibility. Whilst I appreciate comments from the Appellant's SoC regarding who's responsibility it is to maintain the earthen bunds (this is covered in 'Reasonable' considerations) and how much to remove (this is covered in 'Precise' considerations) it is clear that it is a necessary principle to seek that visibility splays are clear and that there are no obstructions above 60cm.
18. Taking the above into account and in conclusion of this matter, it is clear to me that in order to comply with LP Policies GD8 and IN2, that it is necessary to provide a passing area for all weather conditions and enable appropriate visibility splays to the existing access to facilitate the new use. Without this condition, the scheme would cause adverse harm to highway safety. When assessed as a whole against the development plan and any other material considerations, and in conclusion of this matter, Condition No.7 is necessary in order to make the detail of the scheme acceptable.

Relevant to Planning and to the development to be permitted

19. Transport and highway safety are planning issues, and therefore the imposition of such a condition regarding off-site highway measures is relevant to planning. The request for appropriate visibility splays and a passing area is relevant to the development to be permitted, as the works requested are directly related to the new use, which increases the number of vehicle movements that increases the risks towards highway safety as a result of the development.

20. I acknowledge comments made by the Appellant that they disagree with the request, with the works being outside the red line boundary of the application and that they never proposed the works in the first place, and therefore it is not relevant to their development. The request for off-site highway works is relevant to planning and to the development itself. The works are an appropriate measure which does not need to be proposed under the planning application itself, where the Appellant implies that because it has not been proposed means that it is not relevant. This is not the case. As such and in conclusion of this matter, Condition No.7 in question is relevant to planning and to the development to be permitted.

Enforceable

21. To be enforceable, it must be reasonable that a condition can actually be enforced by the LPA, either by it being aware when it is not being implemented or by avoiding it being too vague for the LPA to know when it is being implemented. Whilst the Appellant has not contested the enforceability of Condition No.7, for completeness this element of the test will also be assessed. The condition is worded in a way that is specific and seeks further conversations and details with the LHA and the Council regarding the visibility splays and surfacing of the specified access approximately 300m away. Once details are approved by the Council, these would be easily enforceable as the compliance with the details would be readily observable. In conclusion of this matter, I find that the Condition No.7 as imposed would be enforceable.

Precise

22. In order to be precise, the condition must be specific in what it is asking an applicant to do to comply with the condition.
23. The main concern from the Appellant is that the condition in their opinion is not specific in terms of what it asks the Appellant to do in terms of the location, and what the works actually comprise of.
24. Having reviewed the Condition No.7, I am not of the same opinion. The Condition is precise in that it specifically directs the Appellant what they need to do in order to comply with the condition, for example to submit a scheme to provide surfacing and appropriate verge works. It is not for a condition to specify all of the technical details in the construction and composition of the works required in order to comply with the 'precise' test. Having read the appeal documents, and the exchanges between the Appellant, the LHA and the Council over the course of the application and appeal, there is a lot of detailed information and advice given as to the proposed works, such as the reducing of the bund from the access to the first telegraph pole to 60cm, and that the access to be re-surfaced being the closest access which is 300 metres away, with a plan provided showing the location of this access, and there is no doubt to where this access is located. It should be very clear to the Appellant what they need to do, and given the advice already given, that the LHA and Council would be able to clarify any subsequent matters for submission of an appropriate scheme.
25. Condition No.7 is written in a way that enables further discussion and collaboration between the parties, whilst remaining precise as to what is required. In conclusion of this matter, I find that Condition No.7 is precise.

Reasonable in all other aspects

26. In order to be reasonable, a condition should ensure that it makes sense and is fair on the applicant and others who will need to comply with the condition.
27. It would appear from the appeal documents that the Council and LHA have been pragmatic in their approach, which appears to have commenced with the Council and LHA requesting that a new passing place be provided, which would have required a large amount of works and cost; to then being satisfied with the re-surfacing of a nearby access under the control of the LHA. It is completely reasonable to propose off-site highway works even if not proposed by the Appellant as this directly relates to the harm caused.
28. Whilst the proposed resurfacing is not as ideal or convenient as a newly constructed passing place, the Council and LHA have been satisfied that resurfacing of the access 300 metres away would be reasonable. I also accept the Appellant's comments that this would not reduce the reversing distance from the current situation, however the resurfacing would enable the access to be used as a passing place in all weather conditions, compared to now where this passing place would be difficult to utilise during inclement weather. I agree that this is a reasonable approach that is proportionate to the development and mitigates for the harm as a result of this proposal compared to the alternative which would be to construct a new passing place. I note that there are comments in the Appellant's SoC around what they consider to be excessive cost and viability of such works, however the appeal documents do not provide any evidence that would support this claim. I disagree with the Appellant's comments that they perceive that the works are required to upgrade the road because of pre-existing problems with the road. It is the new use that causes a need to upgrade the elements as suggested, as without the new use, the alterations suggested would not be required.
29. With regards to the viability splays, it is alleged by the Appellant that the bunds were increased in height by statutory undertakers, and the LHA as a result of works to clear out the spoil from ditches along the highway. As such, it is the opinion of the Appellant that it is the LHA's responsibility to maintain their highways and that if the bund is too high, then it should be the LHA that resolves this. Whilst it would be concerning if the LHA or statutory undertakers caused the increased height of the bund from performing their works and not removing spoil, I have no evidence which would demonstrate that this was the case, or whether the height increase was caused by what the Appellant suggests. The increased height of the bund next to the access appears to have been in situ for some time, and I have no detail in front of me as to how or why they may be larger than other bunds surrounding.
30. Given that the existing agricultural access is provided for agricultural activities, the proposed new business use is a materially different use that requires an assessment of the road conditions, visibility splays etc. The LHA have assessed the splays and found them not to be appropriate, and needing to be reduced below 60cm to facilitate the new use. This is a completely reasonable request that is required for the proposed use. The fact that they are pre-existing is not the issue, a new use is proposed, and an assessment needs to be made as to what is needed in order to make the proposal acceptable, and which may be different as a result of the use and development of the access changing. In conclusion of this matter, I find that Condition No.7 is reasonable in all other aspects.

Other Matters

31. I note comments from the Appellant around the Council not having made further comments in relation to a SoC that was put forward by the LHA. As such, the Appellant questions the validity of the LHA SoC given that they are a consultee to the application, rather than a decision maker, and that it is unclear whether the Council agrees with the LHA's position. Having read the LHA's SoC, it expands upon the reasoning and provides further technical advice with relation to the appeal. The LHA does not raise additional matters but is limited to the matters in dispute. As such, it is an appropriate piece of evidence that supports the position of the Council and is a material consideration to this determination.
32. I also note that the Appellant's SoC details that there were no objections made to the proposed scheme from surrounding neighbours. The lack of objections does not mean that the scheme is appropriate when considered against the policies of the development plan and relevant material considerations.

Conclusion

33. For the reasons given above, and considering all evidence before me together with the Development Plan and relevant material considerations, the imposition of Condition No.7 on the planning consent meets the tests of conditions. Taking this into account, the appeal is dismissed.

J Somers

INSPECTOR