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## Appeal Decision

Site visit made on 23 June 2025

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

an Inspector appointed by the Secretary of State.

Decision date: 14 July 2025

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**Appeal Ref: APP/N1025/W/25/3360220**

**Land East of 56 Bostocks Lane, Sandiacre, Derbyshire DE72 2SX**

**(Easting 446997: Northing 335665)**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Northern Star Assets Ltd against the decision of Erewash Borough Council.
  - The application reference is ERE/0923/0047.
  - The development proposed is described on the Application Form as 'Erection of 2 no. drive through/eat in café/restaurants for the consumption of hot and cold food and drink, vehicular parking and associated works and development to facilitate the proposed uses.'
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. It is noted that the application considers a number of planning topics, however the Decision Notice lists only one reason for refusal which relates to highway safety. Whilst this letter's main focus is on highway safety as per the decision notice, I have noted below other matters that do not appear to be resolved which for avoidance of doubt have not formed considerations as part of this decision.
3. It is also noted that the type of application form submitted with the original application is for an 'Application for Planning Permission and consent to display advertisement(s).' Whilst there is a plan submitted which details the advertisements as part of this appeal, there is no confirmation by either party as to the status of the application for advertisement consent or whether this forms an additional part of this appeal. Despite this, and for the avoidance of doubt, this appeal will only deal with the s78 planning application involving the development proposal; and not the advertisement consent.
4. I note that within the appeal documents that there is a document called 'Appeal Statement – Erewash Council<sup>1</sup>,' that appears to have been written by two Elected Councillors of the Erewash Borough Council, although the document is only signed by one of these Councillors. The document does not indicate whether these Councillors sit on the Planning Committee or their role with regards to the appeal. The document is also not supported by any formal statement or approval, such as by the Chair of the Planning Committee or the Council's Planning Officers that the document represents the formal opinion of the Council or whether this document is

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<sup>1</sup> Appeal Statement, Written by Councillor Tim Scott and Councillor Ann Mills,

more akin to a third-party representation which is a question that has been raised in the Appellant's Statement of Case (SoC). I note that the appeal documents do not contain an appeal statement written by the Council's Officers. On this basis, I see no detriment or prejudice to either party to consider this statement as representing the Council's position and shall refer to this document as the Council's SoC on this basis within this letter.

5. I note discussion within Council's SoC and interested parties which places specific considerations around the particular business operator and whether the development use is a hot food takeaway or fast food outlet. The parties to this appeal appear to have taken the operators of the proposed units from the advertisement consent application that notes that the two businesses are proposed to be Greggs and Starbucks. In trying to categorise the use in my mind the nature of the use is more reliant on vehicular than pedestrian/cycle traffic where customers/delivery drivers take-away rather than sit in and consume food on site which is also supported by the Appellant's SoC. I also note comments in the Appellant's SoC that they do not consider that the use is a hot food takeaway, or fast-food outlet, and seek to define the use as a 'Restaurant/café' as in the Appellant's opinion, Starbucks and Greggs are not similar to other more well-known fast food or hot food takeaways such as McDonalds or KFC.
6. Even so, to me the drive through nature of the site combined with the proposed usage would be more akin to a Sui-generis use similar to that of a hot food takeaway/ fast food outlet. If a new or change in occupier was sought then there are only a limited type of businesses that these units would cater for. Additionally, the advertisement application does not run with or restrict the planning application to a particular occupier and could easily be altered to a new occupier once the development/use application is established as the planning permission is not specific to any particular business. On this basis, and for the avoidance of doubt, the assessment of the development will not relate to a specific occupier, but the use as a drive-through use.

## **Main Issue**

7. The main issue is the effect of the proposed development upon highway safety.

## **Reasons**

8. The appeal site is an undeveloped parcel of land located at the end of Bostocks Lane. Bostocks Lane is a residential road with a single carriageway in each direction with a single yellow line on both sides of the road as part of a Traffic Regulation Order (TRO) that restricts parking and waiting from 0900-1000 Mondays to Fridays. Traffic along Bostocks Lane is relatively free flowing outside of peak times with traffic limited to 30mph with there also being a weight limit of 7.5 tonnes which restricts some Heavy Goods Vehicles (HGV) above this limit. Despite this, I witnessed a number of HGVs that appeared to be contravening the TRO using Bostocks Lane, with evidence such as anecdotal and photographs submitted by interested parties and traffic count data from the Appellant's Transport Statement<sup>2</sup> also verifying this.

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<sup>2</sup> By SK Transport Planning, Dated June 2023, Ref SK22249\_TA04

9. During peak hours, traffic is much slower and tends to be queues of traffic along Bostocks Lane to/from the Sandiacre Interchange, evidenced by anecdotal evidence and photos from interested parties as well as the previously mentioned traffic count data which shows average speeds. Many of the vehicles are travelling at or just above the speed limit with the 7 day average showing around 30mph in each direction. However the 85<sup>th</sup> Percentile shows that the average is around 35mph, with there being evidence of a small number of vehicles travelling well beyond the 30mph limit.
10. On my site visit (around lunchtime) I noted Bostocks Lane as busy with both cars and HGVs, but was relatively free flowing. The carriageway is illuminated by street lighting, with the verge in front of the appeal site having a narrow footpath for a small section where the footpath leads to a more formal footpath that runs the entire length of the road before terminating at a crossing point to join another crossing point to the opposite side of Bostocks Lane. The crossing point does not have any refuge to the centre of Bostocks Lane but either side of the road there is some dated and faded tactile paving with the road at this point difficult to cross due to the type, speed and frequency of traffic and the angle at which vehicles enter Bostocks Lane coming from a slip road from the Sandiacre Interchange. Opposite the site on the other side of the road is a small employment park and hotel set back behind trees, with the Friesland School located further to the north where Bostocks Lane changes into Rushy Lane. A short distance from the appeal site, Bostocks Lane leads to the 'Sandiacre Interchange,' a large and complex traffic island that is three lanes wide and provides access to the A52, two arms of Bostocks Lane and both directions of Junction 25 of the M1.
11. I note that there has been traffic surveys<sup>3</sup> carried out in front of the site in November 2024 that showed that AM peak traffic volumes are an average of 1,459 Passenger Car Units, and PM peak times there is an average traffic volume of 1,282 Passenger Car Units which according to the Appellant's Traffic SoC is below the traffic capacity levels of Bostocks Lane. I acknowledge comments within the Council's SoC that they consider this to be an underestimate, however I have not been presented with any evidence which counters the assessment of the Transport Statement in terms of the traffic count along Bostocks Lane.
12. 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 main parties and interested parties and, in light of this, I am satisfied that what I saw represents typical conditions. Based on what I saw on my site visit and the information presented within this appeal I deduce that Bostocks Lane operates with some deficiencies which is predominantly caused by it's relationship with the Sandiacre Interchange where the road, whilst residential, does encounter greater traffic levels, speeds, and vehicular sizes than one would anticipate for a residential road. Whilst submitted accident data confirms that no accidents have been registered along this particular section of Bostocks Lane in front of the appeal site, there were accident records given by the Appellant and interested parties showing reports closer on the Sandiacre Interchange which appears to be from cars manoeuvring, and entering/exiting the junctions associated with the Sandiacre Interchange. Despite this, the absence of formal accident data

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<sup>3</sup> Transport Statement of Case, By SK Transport Planning Limited, Dated January 2025, Ref SK22249\_SOC-02

in front of the appeal site does not in itself mean that accidents have not occurred, near misses, or indeed that a carriageway is 'safe.'

13. In assessing the impacts towards highway safety, whilst not referred to in the Reasons for Refusal on the Decision Notice, the Erewash Core Strategy (CS) Policy 14 seeks that new development reduces the need for travel, especially for the private car, and be readily accessible by walking, cycling and public transport, and enable the efficient operation of the highway network, amongst others. The National Planning Policy Framework (The Framework) Paragraph 115 is also relevant given that it is the main reasoning for the refusal of the application in that it seeks that in assessing development, that development ensures sustainable transport modes are priorities; provide safe and suitable access for all users; reflects national standards and guidance; and that any significant impacts to the transport network can be appropriately mitigated, amongst others. Additionally Paragraph 116 of the Framework seeks that developments are only refused on highway grounds if there is unacceptable impact upon highway safety, or severe impacts would exist after mitigation; and Paragraph 117 seeks that development should give first priority to pedestrians and cycle movements; minimise conflicts between pedestrians, cyclists and vehicles; allow efficient delivery of goods, designed to allow convenient access to charging points; amongst others.
14. As noted in the appeal documents, the proposal seeks to provide two drive through buildings that would both cater for vehicles coming from the M1 and A52 (such as drive through refreshments, resting); as well as residents and cyclists from the surrounding locality who can sit within the buildings to consume as well as to take away. Improvements to the road network have also been proposed as part of the application such as the widening of access, improved pavements and tactile crossing points aimed at addressing some of the identified impacts from the development. The appropriateness of these measures will be discussed further below.
15. The Council's SoC refers to the TRICS outputs presented by the Appellant as part of the application as not being appropriate with comparable locations such as A32 in Gosport, A404 Ross on Wye; A1120 in Stowmarket; and A451 in Kidderminster. In the Council's opinion these locations are not comparable to the proposal and are a significant underestimate of the likely levels of traffic to be encountered as a result of the appeal site. Having reviewed this data, I do not find the comparable examples convincing as to what is proposed at the appeal site. The M1 Motorway is one of the most heavily trafficked main arterial roads in the country and is a national motorway. Whilst I appreciate that road and traffic conditions can vary along the motorway, combined with the A52, a very heavily trafficked A-road; none of the comparable sites presented contain information around the behaviour and influence of motorways, or seem at all similar to the scenario at the appeal site. There is no further explanation given in the Appellant's SoC with regards to the methodology around the comparison, with the main justification that the National Highways Authority (NHA) and the County Council (Local Highways Authority) (LHA) did not question the methodology.
16. It is also unclear whether the comparable sites contain two drive throughs as the examples appear to only indicate one drive-through so it is unclear of the methodology and how this has been modelled to take account of two facilities operating from the same site. Whilst I agree with the Appellant that the NHA and

LHA did not raise any objections to the methodology utilised; the responses are not specific in this respect so it is unclear whether the lack of mention is an omission or whether the silence meant that they agreed with the approach. The NHA do not appear concerned with the methodology in any event given that their emphasis is on the effect of applications to the Strategic Road network of the M1 and A52, rather than the effect caused to sites outside of this such as the appeal site. Based on the above I am not persuaded that the TRICS data illustrating the comparable sites is a robust foundation to base this decision upon around the effect of traffic as a result of the appeal site.

17. I also note that there is a lot of discussion by interested parties with regards to a historic proposal for a two storey McDonalds building on the appeal site which was dismissed at appeal<sup>4</sup> approximately ten years ago. Since then, much has changed to the nature of drive-throughs and takeaways, given that deliveries since the advent of Covid have seen a large shift to home delivery services from takeaway food apps. There has also been a general influx of delivery drivers using electric bikes, motorbikes and passenger vehicles frequenting these types of businesses to carry out deliveries. The shift in provision and operation of takeaways and food businesses has been so quick that many parking standards do not take into account this situation. There can be a number of delivery drivers at any one time, some of these types of uses also have separate entrances to cater for the increased demand from the delivery drivers. It is unclear on the proposed plans or within the transport statement as to whether these delivery driver needs have been catered for.
18. When looking at the plans in further detail, it would appear that the bicycle store which is positioned between Plot 1 and Plot 2 and a smaller rack positioned to the wall of Plot 2 is to cater for staff and persons travelling to the site, rather than delivery drivers who wish to (and will) park directly outside the store. Many of these electric bicycles are quite expensive and having a need to be appropriately secured. There is also one short term waiting bay for a vehicle provided for Plot 1 and two short term vehicular waiting bays for Plot 2. These also appear to be for customers utilising the drive-through, rather than delivery drivers, some of whom will be in vehicles also and may also use these bays. I appreciate that delivery drivers are potentially only visiting for a couple of minutes, but given a case of multiple drivers arriving at the same time which may also be frequenting both buildings in the one trip, they could quickly cause build-up of traffic if parking vehicles or bicycles indiscriminately and potentially obstructing vehicular and pedestrian routes as there appears to be no provision made for them. There also does not appear to be a logical or convenient way for pedestrians or delivery drivers/riders to access both plots in a single journey with no formal crossing points between the buildings with pedestrians needing to share the space with vehicles using the drive through, parked cars and access roads. As such safe and suitable access provision has not been sufficiently provided for all users within the site.
19. The site also appears to be catering for 'normal' passenger sized vehicles, however will take vehicles from the M1 and A52 who are looking for a rest stop or break in driving and will somewhat perform the role of a quasi-services for the motorway and A-road. The layout and parking spaces provided at the site do not cater for larger sized vehicles. If the drivers of larger vehicles do not realise the TRO

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<sup>4</sup> Planning Appeal Ref: APP/N1025/A/14/2226966, decided 6 March 2015



restriction once exiting the motorway or A-Road, there is a real potential that larger vehicles unable to access the site such as buses and HGVs will stop outside of the appeal site along Bostocks Lane and walk over to the takeaway, causing traffic congestion and disrupting the flow of traffic along Bostocks Lane which is already problematic as discussed previously. I appreciate that there is a TRO on the road which is proposed to be amended alongside the opening hours, however as observed on site, and in the appeal documents, there are still a number of vehicles contravening that TRO, particularly the weight limits and speed and this is likely to continue and become worse with the advent of the additional facilities. Whilst I appreciate comments from the Appellant's SoC that this becomes an enforcement matter for the LHA to deal with, proper planning should seek to alleviate and mitigate matters and not be reliant on enforcement and make them potentially worse.

20. I note that in their response to the application that the LHA requested a Stage 1 Road Safety Audit<sup>5</sup> (RSA) of the new pedestrian and vehicular access which identified two road safety problems with the access, predominantly related to the width of the access and the visibility splays, both problems which can satisfactorily be dealt with by widening the access, and ensuring splays are kept clear. The addition of a further crossing point to the new access also appears appropriate.
21. It would appear based on the LHA response that the RSA was only to assess the new accesses, and not the existing access where there is a formal crossing point from the front of the appeal site to cross Bostocks Lane. The opposite side of Bostocks Lane would be utilised by pedestrians and potentially cyclists if coming from the east of the site which consists of an employment park, a hotel, residential dwellings and the Friesland School which has approximately 1300 students (only approximately 170 sixth Form pupils are allowed to exit the school during school hours). The RSA also makes comment that Bostocks Lane "was quite heavily trafficked at the time of the site visit and that vehicles pass the site access along Bostocks Lane at relatively high speeds." As there was no comment regarding the existing crossing point, this would also appear to support the conclusion that the RSA remit was purely focused upon the new access from Bostocks Lane and not upon the existing Bostocks Lane crossing point.
22. This crossing point does not appear to have been examined to any great extent with very little discussion. The deficiencies in TRICS data as identified previously also has repercussions for any type of discussion with regards to this crossing point, which appears to be at best, difficult to cross and navigate based upon the current speed, visibility from the slip road, frequency and type of traffic, particularly if any of the pedestrians had mobility impairments, mobility scooters, prams and so forth. Additionally, if school children do not cross Bostocks Lane at the signalled crossing point at Rushy Lane, then this would be the last crossing point, causing further potential impacts to highway safety. As such I am not convinced that the existing crossing point would sufficiently cater for all users.
23. I can also appreciate discussion around the benefits of the scheme, such as socio-economic benefits from expenditure within the local area; short term benefits in construction of the scheme; employment generation; joined trips with other local businesses; provision of a rest stop to reduce driving fatigue. Whilst not specifically mentioned how, the Appellant is willing to undertake improvements to biodiversity

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<sup>5</sup> Stage 1 Road Safety Audit, By Waterman Aspen, Dated January 2024, Ref SA4394

on site which will enable environmental benefits. Additionally, the buildings could also act as social spaces for people to meet as well as the identified businesses of the units participating in breakfast clubs, social clubs and schools schemes which has social benefits. There are also public benefits from the willingness of the Appellant to fund changes to the TRO, albeit the enforceability of such remains questionable.

24. These benefits would also be present in a scheme which was consistent with the development plan, and as such are afforded limited weight. Taking the above into account, and in conclusion of this matter, the proposed drive through uses and associated infrastructure would give rise to unacceptable impacts towards highway safety and access to all users which includes, vehicles, cyclists and pedestrians, including school children. There is no convincing evidence presented that these issues could be adequately mitigated, and as such the scheme would cause significant detriment to highway safety. As such, the proposal would not be compliant with CS Policy 14, and the Framework, particularly paragraphs 115, 116, and 117 as described previously.

### **Other Matters**

25. I note discussion in the Council's SoC and interested parties around the proximity of the site to the Sandiacre Local Centre and that the development would detract from the viability and vitality of the local centre. This is not a matter that was raised in the reason for refusal and the Planning Officer report did not raise any objection to the proposed use in terms of the sequential approach to which it passed.
26. I note a number of comments raised by interested parties around issues such as environmental impacts; pollution; healthy eating; fast food outlets/ hot food takeaways being inappropriate and in close proximity to schools; increased litter; inappropriate signage; design; highway impacts; biodiversity; anti-social behaviour; noise and air pollution; flooding; impacts during construction; welfare concerns; conflicts with local democracy; previous refusal on the site; cumulative impact from Stanton development; loss of property value; biodiversity impacts; restricting access for emergency vehicles; effect on other small businesses.
27. Matters such as property values and loss of trade to individual businesses are not planning matters so cannot be considered as part of this decision. I disagree that the appeal process contravenes local democracy, as the applicable legislation allows appeals to planning applications and the assessment has been made in accordance with applicable legislation. Given that the appeal has failed for reasons relating to highway safety, there has not been a need to revisit the other matters that have been identified by interested parties. I would however note that some of these issues to me, do appear to be unresolved given their lack/limited of discussion within the Officer's Report.
28. One such example raised by interested parties and not examined to great extent within the Officer's report revolves around appreciation or assessment of design, or reference to the design policies of the CS which relate to assessing scale, form, context, materials amongst others. There is assessment of 'visual amenity' however this is one element of design. The site is directly in front of a line of residential properties, where the feeling and experience is of a residential street with larger detached dwellings that is on the transient outskirts of a settlement. Between the gaps in the houses views are gained to the undeveloped fields

beyond, the tops of trees, which feels more transient than urban. The Sandiacre interchange is nearby and noise is present, however this has less of an influence to the character and appearance. I do not agree with the Appellant's SoC that the appeal site is seen in the context of the motorway as the site is detached from this and directly relates to the houses behind the site. I am unclear how the proposed design which is single storey, flat rooved, car dominated and quite functional that would appear to be a stock design of many drive throughs with large totem signs and illumination has been influenced by the surrounding existing vernacular. I note similar discussions around concerns of how design and context have been dealt with in the previous appeal decision for the site.

29. Additionally, I note a number of references by interested parties around the Framework at Paragraph 97 that seeks consideration around refusing applications for fast food and takeaways where they (a) are within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or b) are in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social-behaviour. As the application is not operator specific and that another business could easily occupy the premises, there does not appear to be discussion around this within the Council Officer's report.

### **Conclusion**

30. Based on the appeal documents, from what I saw on my site visit, the relevant planning policies of the development plan, including material considerations, I conclude that the appeal be dismissed.

*J Somers*

INSPECTOR