



Appeal Decision

Site visit made on 16 January 2018

by Nicholas Taylor BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 February 2018

Appeal Ref: APP/R0660/W/17/3187691

Land to the west of Audlem Road, Audlem, Cheshire CW3 0HE

- 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 Anwyl Construction Company Ltd against the decision of Cheshire East Council.
 - The application Ref 17/4183N, dated 14 August 2017, was refused by notice dated 10 October 2017.
 - The application sought planning permission for residential development of up to 120 dwellings, highway works, public open space and associated works without complying with a condition attached to planning permission Ref 13/2224N, dated 7 January 2015.
 - The condition in dispute is No 1 which states that: *Details of appearance, landscaping (both hard and soft), layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. The reserved matters shall follow the general parameters and broad design/layout concepts set out in the Design and Access Statement dated May 2013; and the terms of the Arboricultural Assessment Report (dated May 2013). The layout shall also show the affordable element of the housing dispersed across the extent of the appeal site, and full details of the access and tight turn lane.*
 - The reason given for the condition is to ensure approval of the reserved matters and to ensure that these and later details comply with the considerations taken into account in approval of the outline permission.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Outline planning permission was granted on appeal¹ on 7 January 2015 for residential development comprising 120 dwellings on a site on the edge of the small town of Audlem. The scheme involves creation of a new access onto the A529 Audlem – Nantwich road.
3. In the scheme approved at outline stage, this access was to incorporate a right-turn lane in the form of a "ghost island", marked out on the A529, to facilitate right-turning movements into the development by southbound traffic. Although access was not a reserved matter, the Inspector who determined the appeal considered that the access details as submitted required further clarification and so made specific reference to access in condition No 1. The

¹ ref APP/R0660/A/13/2204723

parties agree that the reference in this disputed condition to a "tight turn lane" was intended to mean "right turn lane".

4. The development has now commenced and the appellants consider that the site access need not incorporate the right turn lane. My attention has been drawn to the approval by the Council, on 21 October 2016, of an application for approval of reserved matters, which seemingly did not specifically include access, referring to plans which show a simple junction, without a right- turn lane. A subsequent application to vary condition 1 of the reserved matters approval was also approved, continuing to show a simple priority junction. The Highway Authority's technical consultant also recommended approval of a s38 adoption agreement showing a simple junction. However, in discharging condition 1 of the outline consent by permission dated 16 November 2017, the Council has also approved plans which clearly show a right turn lane. Notwithstanding these previous approvals, I must determine the appeal before me, which specifically seeks amendment of the disputed condition.
5. Therefore, I consider that the main issue in this case is whether the disputed condition is reasonable and necessary, having regard to highway safety and to national and local policy and guidance concerning imposition of conditions.

Reasons

6. The new access to the development lies just outside the previous edge of the town, on a relatively open stretch of the A529. I have been given differing accounts of how the proposed right-turn lane came to be incorporated in the scheme and how matters have progressed to the current appeal. The Council, in its capacity as Highway Authority requested that the proposed access in the original outline application should incorporate a right turn lane with a ghost island. The urban 30 mph speed limit was also indicated as being extended to a point north of the access, along with (unspecified) associated traffic calming measures. The current appellants' highways consultants, who were also involved in the outline application, acknowledge that it was agreed at the time that it would be desirable, on highway safety grounds, to introduce a right turn lane.
7. In the event, an appeal was lodged against non-determination of the outline application. The Statement of Common Ground (SOCG) between the main parties included agreement on design speed and visibility standards for the junction. It was agreed that a simple junction would satisfy those standards. With reference to The Design Manual for Roads and Bridges (DMRB) TA 79/99 'Traffic Capacity of Urban Roads', and in the light of studies carried out by the highways consultants, it was agreed that the peak hour flows on the A529 were within the road's theoretical capacity. Moreover, it was predicted that, with the development, the simple junction would work with a high level of spare capacity and with negligible queues or delays. Thus, it was agreed that a right turn lane was not required in order to achieve the required junction capacity.
8. The DMRB document 'Geometric Design of Major/Minor Priority Junctions' TD 42/95 provides guidance on the design of major/minor priority controlled T-junctions. It states that provision of right turn lanes on rural junctions, which is effectively the case here, can have significant highway safety benefits. A study of rural T-junctions indicated that the frequency of accidents involving a right-turn at such junctions was some 70% less than at simple junctions. This is not disputed by the appellants' highway consultants. The Council says that

the new development is likely to generate two-way annual average daily traffic flows (AADT) which, according to TD42/95, would indicate that a right turn lane should be considered. The appellants' evidence does not directly contradict this but it is apparent that the traffic flow on the A529 is less than that at which DMRB guidance suggests provision of a right-turn lane. All in all, the evidence before me indicates that the highway conditions at the appeal site are within the range where the DMRB allows discretion. At paragraph 7.7.3 of the SOCG, it is accepted that "from a road safety point of view, it is desirable to provide a right turn lane on Audlem Road at the appeal site access."

9. The Inspector determining the first appeal noted that two versions of the access had been submitted but that, whilst they differed in some details, the position of the access remained constant. Access was not an issue in contention and did not form one of the Inspector's main issues. However, in granting planning permission, she was approving the access arrangements as proposed. The main reference to access is at paragraph 104 of the decision. In this, endorsing the Council's approach, the Inspector specifically refers to the 'ghost island' right turn lane, extension of the speed limit and other traffic management measures. In my view, it is significant that, whilst requiring (in condition No 1) further details of access to be submitted, she considered it appropriate to specifically refer to the right-turn lane.
10. For the current appeal, the appellants have submitted additional highways evidence. Analysis of accident data for a stretch of the A529 from the centre of Audlem to a 4.6km distance to the north of the town, suggests that rear-end shunts, of the type which a right turn ghost island would be designed to avoid, have been very rare. I consider that this analysis carries some weight but most of the junctions involved are within the 30mph urban area, whereas the appeal site is at the edge of the 30mph zone. None of the rural junctions is completely comparable to the appeal site but one of them did experience a serious 'rear end shunt' accident, of the type which a right turn lane is designed to avoid.
11. The Council's highways technical adviser responds that the assumptions in the appellants' more recent technical evidence regarding capacity and safety are correct and that this access, along with numerous similar priority junctions on the road network, can work safely without the need for right turn lanes. However, the response goes on to affirm that the purpose of the right-turn lane was to reduce delay on the A529 and to improve safety of the junction, seeing no reason now to omit the lane. I accept that the Council's highways advice at this stage is somewhat equivocal, but I am unable to afford weight to the appellants' claim, based on uncorroborated conversations with an officer, that it is, in fact, in complete agreement.
12. The previous approval of reserved matters and discharge of conditions showing different solutions to the design of the access do not clarify the picture before me. Taken together, they do not decisively point me towards either outcome in the current appeal case.
13. At my site visit I observed that the access, as currently built, has reasonably good visibility in both directions along the A529, despite being on a bend. However, the 30mph speed limit is positioned right at the junction. Southbound traffic on the main road is likely to be travelling relatively fast on approach to the junction, which is via a bend and an incline. Double white lines

and hazard road markings may deter speed to some extent but there is no proper street lighting at this point. I am not convinced that cyclists or pedestrians would be major beneficiaries, as claimed by the Council and some third parties, but, to my mind, this is the type of junction at which DMRB guidance envisages a right-turn lane would be likely to be effective.

14. Policy SD 2 of the *Cheshire East Local Plan Strategy* (CELPS) expects all development to provide or contribute towards identified infrastructure. CELPS Policy SD 1 identifies that development should, among other things, provide safe access. Saved Policy BE.3 of the *Borough of Crewe and Nantwich Replacement Local Plan* also requires safe access to developments to be provided, as does, in terms, Policy T2 of the *Audlem Neighbourhood Plan*. Paragraph 32 of the *National Planning Policy Framework* (the Framework) requires decisions to take account of whether safe and suitable access to the site can be achieved for all people. I have also taken into account the paragraph's final bullet point, which seeks cost-effective improvements and cautions against preventing development on transport grounds unless the cumulative impacts are severe.
15. 'Safe' cannot be an absolute concept in the context of these policies and this case. It is about establishing an acceptable degree of risk to the safety of highway users in a particular set of circumstances. Whether the junction, with the omission of a right-turn lane, achieves a threshold of safety sufficient to satisfy the policies is a matter of planning judgement based on the evidence before me. The provision of an access incorporating a right-turn lane was an integral feature of the outline permission granted on appeal after a thorough examination. Such an important part of that decision should not be set aside lightly. The appellants' additional highways evidence in support of this appeal carries some weight but, taking account of all the evidence before me, does not persuade me that the original requirement for a right-turn lane can be waived without unacceptably increasing the risk to highway safety.
16. Paragraphs 203 and 206 of the Framework make clear that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. *Planning Practice Guidance* (PPG) confirms that all of these six tests must be satisfied when imposing conditions on a planning permission. The purpose of a condition is to make development acceptable where it would otherwise be unacceptable and conditions should not be imposed where they do not serve that purpose, regardless of whether the applicant agrees to the condition. In this case, I have found that there is insufficient evidence to reach a conclusion that the overall proposal would be acceptable if the condition were to be varied as proposed.
17. Accordingly, I conclude that the disputed condition is reasonable and necessary, in the interests of highway safety, having regard to national and local policy and guidance, and for the reasons set out above, the appeal should be dismissed.

Nicholas Taylor

INSPECTOR