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## Appeal Decision

Hearing Held on 26 June 2019

Site visit made on 26 June 2019

**by John Morrison BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 July 2019**

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**Appeal Ref: APP/X1355/W/18/3203980**

**Land at Catkin Way, Bishop Auckland DL14 9TF**

- 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 Gleeson Regeneration Ltd against the decision of Durham County Council.
  - The application Ref DM/17/00466/FPA, dated 9 February 2017, was refused by notice dated 22 March 2018.
  - The development proposed is described as a detailed planning application for the erection of 75 no. two storey 2, 3 and 4 bedroom semi and detached dwellings with associated works.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether or not the proposed development would give rise to an unacceptable impact on the public highway with particular regard to delays through queueing and the free flow of traffic.

### Reasons

3. The appeal site is part of a wider area of land formerly in employment use as part of an edge of town industrial estate. It is still laid to hardstanding but overgrown in places. The buildings that contained the employment uses have been demolished and remnants are still apparent. There is some planting to the boundaries which are also formed by bunding and mesh fencing. Catkin Way forms a linear access road to the appeal site, running southwest from Greenfields Road.
4. A short distance southeast from where Catkin Way meets Greenfields Road is a four-way traffic light controlled junction with Watling Road, Maud Terrace and Dilks Street. The appeal site and access thereto are in an area of mixed land uses. There are clustered flatted developments, conventional street frontage dwellings, industrial uses and a large retail park which includes food and non food outlets. The junction serves as access to and routes between these uses.
5. The crux of the Council's case in respect of this main issue is that the proposed development would have an exacerbating effect on the operation of the

aforementioned junction by virtue of increased queueing that would subsequently impinge on the free flow of traffic.

6. Both main parties have provided detailed evidence to support their respective position. In the appellant's case they take the view that the additional traffic generated by the proposed development could be absorbed by the junction's existing capacity and it would still operate efficiently with minimal and manageable queueing. In the event that further capacity at the junction was however needed, they have suggested a package of measures of a total cost of just over £60,000 that they would agree to fund. These measures concern the Greenfields Road arm of the junction and in the main would comprise carriageway widening works to create a dedicated right turn lane amongst other things.
7. The Council's stance sets out that the junction is at capacity currently and in particular queueing is an issue, specifically those that take an unacceptable time to clear. Additional traffic through the junction would add to queue length and thus they would take longer to clear. Both parties agree that greater demand is placed on the junction during peak periods which tend to be Friday afternoon and into the evening and Saturday daytime. The Council remain of the view that a significantly greater package of measures to improve the junction are needed, totalling around £241,000. This would include more comprehensive alterations to the junction to include replacement signalling, building out the corners and mapping (on other parts of the road network) of the impact of potential traffic displacement from the junction caused when people may seek to avoid it during busy times.
8. Whilst the Council and the appellant are some way apart on their assessment of the ultimate level of the likely impacts of the proposed development on the junction, looking at a combination of traffic movements, vehicle counts and pedestrian uses of the signal controlled crossings it certainly seems to be the case that the junction is a busy one. The parties seem to be in agreement about this. It has something of a nodal importance in this respect, connecting four main single carriageway roads, linking a predominantly residential area to the north with a dense concentration of retail, food and leisure uses to the south west.
9. The data I have seen concerning movements through the junction paints a picture of very heavy use during peak periods. It seems to me that, due mainly to turning across advancing lanes of traffic at certain phases, queues tend to be something of a permanent feature. I see the arm at Greenfields Road being a particular focus of this arrangement given that this is a right turn, across advancing traffic, to access the aforementioned commercial area. Greenfields Road has a large number of feeder roads onto it from the also aforementioned residential area to the north. The appeal scheme would also feed onto Greenfields Road and traffic is most likely to then travel south to the junction if accessing said commercial area.
10. The site visit that was made on the day of the hearing was mid afternoon on a week day and queues of around five to six vehicles were a feature of each junction arm when on red. Whilst these generally cleared during each green light, it is important to bear in mind there was only a small number of right turns from Greenfields Road and observations were well outside of measured peak time.

11. I can only really see the appeal scheme having the potential to increase the use of the junction and thus demand for the use of the services to the southwest of it. Whilst I appreciate that not all residents will have a desire to use the services, those that will, will add to the existing effect and always increase right turns across traffic. It is the waiting for vehicles to undertake this manoeuvre that can have a delaying effect on clearing queues. Queues that can extend north up Greenfields Road and effect exiting feeder roads.
12. There seems to be public transport available and the appeal scheme would also seek to provide an improved pedestrian link between it and the footways on Greenfields Road. These factors would have some mitigating effect on the increase in vehicles using the junction in the manner I have described. However, the fact that residents would likely be accessing supermarkets (of which there are three) tends to mean they would be more likely relying on the use of a car to transport purchases home. I am also mindful that 75 dwellings would not appear overnight and thus the overall impact would be staggered but ultimately, taking the above factors into account, it seems to be that the demand on the junction will significantly increase over time and that as a consequence some improvements would be necessary to assist for alleviation purposes.
13. Returning to the package of measures suggested by each party it seems patently clear that, in the same way as their assessment over the effects of the scheme in the context of the existing junction's loading, they are some way apart. I have seen a cost breakdown of each package. The Council's includes signal replacement which the appellant disputes. Indeed, the existing ones do not appear to be that old and arguably serviceable. There was some discussion at the hearing as to the need to build out corners of the junction and whether larger vehicles could navigate such but I am satisfied based on what I saw from the Council this would be possible. I feel widening and a dedicated right turn lane would be most effective given the greater likelihood it would allow a swifter reduction in queueing traffic when vehicles in front want to turn and followers wish to turn left or go straight on. The costs for this element differ from each party and the Council's estimates relay on larger contingencies. The Council also state that some of the funding from the contributions sought would be used to model the potential effects of avoidance of the junction during busy times and thus what might have to be done on the rest of the local network.
14. The Council have requested, and in the case of the extant planning permission for a 100+ unit housing development on a site adjacent secured, a £241,000 contribution for improvement works to the junction. Obviously, the monies already secured would only be paid should this other development come forward and obviously I cannot, in consideration of this scheme, guarantee that would be the case. Indeed, neither can I ultimately take what it could do into account given it is the effect of the appeal scheme alone that I need to be mindful of when determining what it would be reasonable of the developer to contribute.
15. In the planning obligation for the 100+ scheme adjacent, the Council informed me that there was a provision to refund some of the contribution back if either monies came forward from other sources or it wasn't needed. They have suggested they would do the same for the appeal scheme.

16. I am mindful that I have not been party to discussions over this other scheme but I am equally aware that the appeal one is of a lesser scale. I thus have concerns that the Council's suggestion could amount to saying the contribution, in the first instance concerning the appeal scheme, might be too high and thus not fair and proportionate to the impacts of the proposed development in isolation.
17. Therefore, and for other reasons I have stated, I see that the necessary contributions towards an improvement that would be reasonable and proportionate from the appeal scheme would be somewhere between the appellant and the Council's estimations. Moving onto the security thereof for the purposes of a planning permission, I have no completed planning obligations before me. Both parties seem to be content that a condition would be sufficient, a matter that I have given some thought to.
18. Planning Practice Guidance (PPG) states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.
19. The use of a condition may be appropriate, again having regard to PPG, in the case of more complex or strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk, but I do not feel the proposed development amounts to such a situation.
20. I note paragraph 109 of the Framework<sup>1</sup> sets out that development should only be prevented on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. In the case of the proposed development alone, and putting aside my explanation as to why some improvement would be required, I do not consider the impacts would amount to being severe. Whilst I cannot, as I have said, guarantee that the other extant development will come forward, I would nonetheless say that on a cumulative basis, and given what and where this other development would be in relation to the appeal site, there would be a severe impact due to the overall additional scale of development in net terms.
21. Notwithstanding this, paragraph 108 puts forward that, in assessing sites for development, it should be ensured that (amongst other things) any significant impacts from the development on the transport network (in terms of capacity and congestion) can be cost effectively mitigated to an acceptable degree. With regard to my findings overall, I am not satisfied this would be the case with the appeal scheme.
22. With the above in mind, the appeal scheme would give rise to an unacceptable impact on the public highway with particular regard to delays through queueing and the free flow of traffic. Such that it would be contrary to the aims of the Framework as I have referred to them and saved Policies GD1 and T1 of the

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<sup>1</sup> The National Planning Policy Framework 2019

Local Plan<sup>2</sup>. Amongst other things, these policies seek to ensure that new development does not create unacceptable levels of traffic which exceeds the capacity of the road network and that any highway works required will be met at the developer's expense.

### **Other Matters**

23. The principle of the proposed development is acknowledged as being acceptable and in other areas, those not concerned with this main issue, there would either be no adverse impacts arising or such could be acceptably mitigated. Having seen and heard the evidence in this respect I have no reason to disagree. However, this would amount to an overall lack of harm and thus be neutral in the balance. It would not be able to weigh against harm.
24. The scheme would provide housing of a not insignificant amount albeit the appellant does not seem to doubt the Council's position on the matter of housing supply or delivery. The appellant suggested at the hearing that the developer looks to provide affordable housing but this was taken to mean lower cost rather than affordable for the purposes of provision and management going forwards. In any case, there is no suitably robust mechanism before me to secure affordable housing for the scheme. There would be some economic benefits arising from investment in construction and expenditure going forwards. Some of this would be time limited. The scheme would redevelop a brownfield site which would yield some environmental improvements but this would be at the expense of a development that would be harmful in the manner I have set out. Better pedestrian links from the appeal site and the rest of the settlement would be provided.
25. I would ascribe some positive weight to these benefits but, taken together, they would not be sufficient to be such weighty material considerations that they would outweigh the harm or conflict with the development plan that I have found. Ultimately, the ability of residents to access services they require to support their lives is a fundamental factor in the successful function of a given development and for the reasons I have stated, the proposed development has the capability to affect this detrimentally for both the incumbent and future population.

### **Conclusion**

26. I have had regard to other matters that have been raised, which include representations from local residents, but it is for the reasons I have explained that the appeal is dismissed.

*John Morrison*

INSPECTOR

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<sup>2</sup> Wear Valley District Local Plan 1997

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Chris Dodds

Gleeson Regeneration Ltd

Mr Mark Eagland MTP MRTPI

Peacock and Smith

Mrs Aimee Thompson

AT Transport Planning

### **FOR THE LOCAL PLANNING AUTHORITY:**

Miss Laura Eden

Durham County Council

Mr John McGargill

Durham County Council

### **DOCUMENTS SUBMITTED AT THE HEARING:**

- A4 copy of 1:500 plan showing large vehicle track paths through the junction taking account of corner build outs, submitted by the Council.