Grounds of Appeal

Removal of Planning Condition on Permission 07/01150/FUL
Land adjacent to 391 Coventry Road
Hinckley
Leicestershire

Application 09/00343/CONDIT

HBJ Gateley Wareing
One Eleven
Edmund Street
Birmingham B3 2HJ

GROUNDS OF APPEAL

Planning permission has been refused to remove condition 13 of planning permission 07/01150/FUL requiring improvements to the highway before the occupation of more than 2500 square metres of floorspace at the at the development is occupied. The history relating to the site and the granting of planning permission is set out in the planning statement which was attached to the application.

The reason for refusal states that the removal of the condition would lead to a detrimental impact to the safety and free flow of traffic on the A5 Trunk Road which would be contrary to Policies BE1 and IMP1 of the adopted Hinckley and Bosworth Borough Council.

The appellant is appealing the decision on the grounds set out in the planning statement, that the condition is contrary to Circular 11/95. It is ultra vires as it fails to meet the tests of necessity, precision and reasonableness and is not relevant to the development not only at the date of granting of permission but also at today's date. The Inspector is asked to consider the planning statement as part of the grounds of appeal.

Discussions took place with both the Highways Agency and Local Planning Authority, prior to and throughout the application period. At no time during these discussions was the issue of road safety referred to. The HA and LPA referred only to easing congestion at the roundabout. Safety is not an issue at Dodwells Roundabout. The accident rate at the roundabout is not unusual. Safety should not therefore be used as a reason for refusal, particularly when the applicant was not given the opportunity to comment on this in advance of the meeting of the planning committee.

The applicant will be seeking costs in relation to the reference to safety in the reason for refusal.

Policy BE1 of the Hinckley & Bosworth Local Plan requires that planning permission should be granted where it ensures that there is adequate highway visibility for road users and does not adversely affect the occupiers of neighbouring properties. As stated in the planning statement and supporting documents supplied to the LPA with the application, there was no highways need for the condition in 2007 when permission was granted nor was there at the date of the application for permission to undertake the development without complying with the condition. Further evidence will be supplied in relation to highways need during the course of the appeal. In fact, the roundabout has sufficient capacity in highways terms up to 2019. The development therefore meets with Policy BE1 and planning permission should be granted.

Policy IMP1 states that planning permission will be granted where a contribution will be made towards the provision of necessary on-site and off-site infrastructure to serve the development.

As stated in the planning statement, the contribution in terms of works was not necessary at the time of the granting of permission and is still not necessary now. There is sufficient capacity in the roundabout to cover actual traffic at today's date and traffic modelled from the

developments now existing in the area and the anticipated development at the nearby greyhound stadium up until 2019.

The works are also not required to serve the development. The industrial development will not result in such volumes of traffic as would make the off-site infrastructure works necessary. In the event that the Inspector considers that works are required to the roundabout, as stated in the planning statement, such works are not required solely in connection with the development permitted by planning permission 07/01150/FUL and therefore not only do not meet with the requirements of Circular11/95 but also do not comply with Policy IMP1 of the Local Plan.

The HA and the LPA have both conceded that the works are to serve not only the industrial development for which permission was granted but an earlier residential development and other industrial developments which have been constructed in the vicinity of the development. This is further evidence that the works are not required by the development and therefore do not meet with the requirements of Circular 11/95 and Policy IMP1 of the Local Plan.

It should be noted that the condition was not imposed as a result of a request by the Highways Agency. In fact, the Highways Agency were not formally consulted by the Council in relation to the application. A copy of an e-mail is attached sent by the applicant's agents to the Highways Agency before submitting the appeal stating that should they be consulted they would respond to the consultation with no objections as "in actual flow terms the impact of the development traffic to the A5 was not considered to be significant".

It therefore appears that the condition was merely copied from an earlier permission without giving any thought to whether it remained necessary and relevant at the date of the granting of permission.

This in turn brings into question the lawfulness of the direction by the Highways Agency that planning permission should not be granted until such time as the outstanding issues have been resolved and approved in writing by them when the condition was not requested by them. That can be dealt with at the Inquiry unless the Highways Agency withdraw it in advance.

In addition, it therefore remained open for the LPA to defer determination of the application until such a time as the matters were agreed. Instead the LPA gave incorrect advice to the members of the planning committee that the Highways Agency had directed refusal of the application which the members followed. As such, the appellant is seeking costs in respect of the whole of the appeal.

In conclusion, it is considered that the removal of the conditions has not been assessed correctly by the Local Planning Authority or the Highways Agency against the Hinckley & Bosworth Local Plan and Circular 11/95. The Inspector is therefore respectfully asked to allow the appeal.

From: Jones, Steve (WM) [mailto:stephen.jones@highways.gsi.gov.uk]
Sent: 09 January 2007 10:56
To: Dave Cheetham - RODGERS LEASK LTD
Subject: A5, Coventry Road, Hinckley

07/01150/FUL

Sorry for the delay in responding to your 13th Dec letter; I was waiting to hear from Faber Maunsel as the person looking at this was on leave until yesterday.

I note that the proposed development site has an existing planning permission for 10 commercial units. The permission allows a development of 7000 sq.m of B1, B2 or B8 and does not stipulate any proportions to be applied to each of these uses. Therefore, the site could be developed for 7000 sq m of B1 use only, which would provide the worst case trip generation from the proposed development.

The proposals are now to develop the site for a mixed use development consisting of:

- Vauxhall car Showroom 743 sq m
- Ford Car Showroom 800 sq m
- Ford Service Centre (B2) 3000 sq m
- Offices 2322 sq m
- Warehousing 2787 sq m

Total 9652 sq m

I understand that a planning application is likely to be submitted formally at the end of January.

You have compared the trip generations for the existing planning permission and the current proposals. Based on our consultant's calculation of the trip generations using TRICS 2006 (b), the additional numbers of trips travelling to the A5 are 5 in the AM peak and 11 additional vehicles in the PM peak. Therefore in actual flow terms the impact of the development traffic on to the A5 is not considered to be significant.

Therefore we would respond to the consultation with no objections based on highway grounds.

Please contact me if you have any further queries.

Regards

Steve

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Department for Transport

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