



Appeal Decision

Site visit made on 13 January 2025

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2025

Appeal Ref: APP/K2420/W/24/3347640

Poplar Cottage, Little Shaw Lane, Markfield, Leicestershire LE67 9PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Nathan Proud against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref is 24/00021/FUL.
 - The development proposed is part change of use of site to retail to allow public access to the nursery along with the provision of a car park.
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Decision

1. The appeal is allowed and planning permission is granted for part change of use of site to retail to allow public access to the nursery along with the provision of a car park at Poplar Cottage, Little Shaw Lane, Markfield, Leicestershire LE67 9PP in accordance with the terms of the application, Ref 24/00021/FUL, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Nathan Proud against Hinckley and Bosworth Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the determination of the application, a revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. However, as the parts most relevant to the main issue in this appeal have not substantially changed, I have not gone back to the parties to seek further submissions. I consider no party has been prejudiced by this approach.
4. Since the determination of the application, a revised version of the Leicestershire Highway Design Guide was published on 18 December 2024. As such, the Council have confirmed that Section IN5 of the former Leicestershire Highway Design Guide (2022) has been superseded with Policy 2. Both parties have commented on this. To be clear, in the determination of this appeal I have had regard to the latest version of the Leicestershire Highway Design Guide 2024 (LHDG).

Main Issue

5. The main issue is the effect of the proposed development on highway safety.

Reasons

6. The appeal site is located on the northeast side of Little Shaw Lane, a dual-carriageway (A511), identified as part of Leicestershire County Council's Resilient Road Network and is part of the Department for Transport's major road network. This section of dual carriageway runs southeast bound between a traffic light controlled roundabout, known as the Flying Horse roundabout, west of the appeal site and a roundabout at junction 22 of the M1 motorway.
7. The appeal site already has an existing access point off the eastbound side of the dual carriageway, a short distance from the Flying Horse roundabout west of the site. This access point provides vehicular access to Poplar Cottage and the existing horticultural business. The speed limit from the roundabout to the access point is 40mph, changing to 50mph immediately prior to the access point.
8. The proposed part change of use of the site to retail and the provision of a car park would allow public access to the horticultural business. Both parties agree that this would lead to an intensification of the use of the access point. The Council is concerned that the intensified use of the site would lead to more turning manoeuvres into the site, which could pose additional danger to road users on a road that the Local Highway Authority (LHA) has stated is highly trafficked with vehicles moving at high speed. As such, drivers would not be expecting vehicles to slow down in order to enter the site.
9. Vehicles entering the site would be approaching from the west and in the left-hand lane of the short section of dual-carriageway between the Flying Horse roundabout and the access point. While the section of road prior to the access point has a 40mph speed limit, vehicles preparing to enter the site would likely be travelling at a lower speed, having just exited the roundabout. The existing dropped kerb is proposed to be widened to increase the radii of the junction. While the LHA does not consider this would be of benefit to mitigate their concerns over the increased use of the access, from what I observed, the proposed dropped kerbs, along with the existing access width would be sufficient for two vehicles to pass. This would mean that any vehicle wanting to enter the site would not be waiting on the carriageway for a vehicle to exit the site but could easily turn in to the site. They would also be signalling to enter the site, providing advance warning to vehicles behind.
10. When exiting the site, vehicles can only turn left due to the central reservation. This results in no conflicting traffic movements with vehicles entering the site as they too can only turn left. As the road speed changes from 40mph to 50mph west of the access site, eastbound vehicles would typically be speeding up after exiting the Flying Horse roundabout, heading towards junction 22 of the M1. A speed survey undertaken by the appellant demonstrated that the 85th percentile speed of traffic at the access point was 50mph for eastbound traffic. However, the appellant contends that the speed of vehicles as they enter the visibility splay envelope would be likely well below 40mph because of vehicles having just left the roundabout. While I see no reason to disagree with this, such speeds could still make it difficult for vehicles exiting the site to accurately judge the speed of oncoming vehicles.

11. However, on my site visit, I observed clear visibility from the junction of the site. Approaching traffic from the roundabout, approximately 160 metres away, could be easily seen, aided by the wide verge, free of obstruction. No concern has been raised by the LHA regarding the visibility splays. Likewise, any oncoming vehicles as they exit the roundabout would be able to see vehicles at the access point waiting to exit and thus would not be surprised and could respond accordingly. Furthermore, the Flying Horse roundabout is signal controlled, which means that traffic is not constant, with regular breaks in the flow. As the roundabout can be seen from the access point, exiting vehicles would be able to readily observe this, and it would allow ample opportunity for drivers to egress the site and gain speed when there is no oncoming traffic.
12. There have been no personal injury accidents recorded at the access point in the last 6 years up to 2023. There have only been two recorded personal injury collisions within the last 5 years between the Flying Horse roundabout and the M1 junction, both of which occurred on the westbound carriageway on the approach to the Flying Horse roundabout and were recorded as slight in severity. Neither appear to be related to vehicles entering or exiting existing access points off the A511 in the vicinity of the appeal site.
13. I note there are existing access points off the A511 close to the Flying Horse roundabout, including a petrol station and industrial unit on the westbound carriageway. Similar to the appeal site, these are accessed shortly after leaving the Flying Horse roundabout. In addition, some of the other access points have a merge/diverge taper, such as that east of the appeal site giving access to the unclassified road Little Shaw Lane. However, the evidence before me does not indicate a persistent problem with highway safety at this location.
14. The LHA contend that the western arm of the A511, where the petrol station and industrial unit are located, has a more urban character than the eastern arm, which they consider is rural in character. As such, they contend that road users would be more likely to anticipate vehicles turning into those locations, and that those access points are also within the 40mph speed limit. While the eastern arm of the A511 as a whole has a less urban character than that of the western arm, I find that it is only after passing the appeal site access point where it transitions to a more rural character. Prior to this, the streetlighting, bus stop and layby, traffic lights, public house and the residential dwellings on the opposite side of the carriageway are all visible and cumulatively give the characteristics of a more urban environment. Given this, and as there is good visibility to and from the site entrance with no obstructions, I find the access point, even with it being located on a road with a higher speed limit than the petrol station and industrial unit, would not come as a surprise to road users.
15. Given the status of the road and proximity to the motorway, the road is busy at peak times. However, the site is not proposed to be open until after the morning rush hour, and the opening hours could be conditioned. The appellant has highlighted that, based on a similar business at another site, the anticipated number of vehicles entering and exiting the site in an hour would be 10 during low season and 26 during high season. Whilst the site would be open during evening rush hour with a proposed closure time of 18:00, the appellant has set out that based on their existing nursery business in Rothley, peak times are typically between 10:30 and 14:00, and that TRICS data suggests the busiest hours for garden centres generally are between 11:00 and 16:00. Whilst the business is not

a garden centre, it nonetheless gives a good indication that the business is unlikely to be busy during the peak rush hour at the end of the day. Thus, whilst the proposal may result in an average of between 80 and 208 daily trips, this is an average, with demand seasonal and typically focussed outside times when traffic flows are at their highest, as evidenced by the appellant's submitted traffic flow data.

16. Given my findings regarding vehicles entering and exiting the site, levels of anticipated demand throughout the day and the evidence submitted by the appellant, I do not consider that an intensified use of the access would lead to an unacceptable impact on highway safety.
17. The LHA has highlighted that the Flying Horse roundabout has capacity issues, with improvements anticipated along the A511 as part of the County Council's major road network growth corridor scheme. I have limited information on what the improvements would consist of and no evidence before me to suggest that the appeal scheme would prejudice any such improvements. As I consider the appeal scheme would not result in an unacceptable impact on highway safety, I find the objectives of the growth corridor scheme would also not be prejudiced.
18. In support of their case, the LHA has drawn my attention to a recent appeal decision¹. There appears to be some similarities, including vehicles increasing in speed, the road being part of the major road network and visibility splays being sufficient. However, the character of the road in the vicinity of that site appears to be more rural than the scheme before me, with the Inspector noting the absence of street lighting, the road being flanked by trees and the access point emerging between trees, as such the Inspector found that the access would be unexpected. I also have limited information before me on the details of the proposed access point in that appeal. For example, whether the nearby junction of Cornwall Way that is mentioned in that appeal decision is traffic light controlled or whether that junction is visible from the access point. Thus, I cannot be sure of the comparability of the site-specific circumstances and as such, it does not alter my view.
19. For the reasons given above, I conclude that the proposal would not result in a significant adverse impact on highway safety. The proposed development would thus accord with Policy DM17 of the Site Allocations and Development Management Policies Development Plan Document (2016), which requires, amongst other things, that proposals do not result in a significant adverse impact on highway safety. The proposal would accord with Policy 2 of the LHDG which seeks to ensure proposals do not result in unacceptable road safety and operational concerns and it would also accord with Policy M10 of the Markfield Parish Neighbourhood Plan (2021) and the Framework which both seek to ensure development has safe and suitable access.

Other Matter

20. I am aware that this scheme is the same as a previous application which was refused² and that the LHA raised no objections to previous applications³ on the site on the basis that the access would not result in an increase in traffic.

¹ Ref: APP/K2420/W/24/3343996

² Ref: 22/01127/FUL

³ Ref: 18/00272/FUL and 20/01363/FUL

Notwithstanding this, I have determined that on the basis of the information before me, there would be no significant adverse impact on highway safety and as such these factors do not alter my view.

Conditions

21. I have considered conditions suggested by the Council and appellant having regard to the tests in the Framework and the advice in the Planning Practice Guidance ("the PPG"). Where necessary I have made changes to the wording of conditions in the interests of precision and clarity.
22. A condition requiring the development to be carried out in accordance with approved plans is needed for the avoidance of doubt.
23. Conditions on access, parking and turning are necessary in the interests of highway safety. To ensure there would not be a detrimental effect on living conditions and in the interests of highway safety, a condition to restrict hours of opening is necessary.
24. In the interests of flood prevention, a condition is necessary to clarify details of the soakaways and to ensure its implementation.

Conclusion

25. For the reasons given above the appeal should be allowed.

T Bennett

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings: Site Location Plan 18.3588 and 18.3588.04D Rev D.
- 3) The use hereby permitted shall not commence until such time as the access arrangements have been constructed in accordance with drawing number 18.3588.04D Rev D. The access as constructed shall be retained thereafter.
- 4) The use hereby permitted shall not commence until such time as the parking and turning provision has been implemented in accordance with drawing number 18.3588.04D Rev D. Thereafter that space shall be kept available at all times for those purposes.
- 5) Opening hours to the public shall be between the following hours:
1000 – 1800 Mondays to Saturdays,
1000 -1600 Sundays and on Bank or Public holidays.
- 6) The use hereby permitted shall not commence until soakaways for the carpark have been constructed in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The soakaways shall be managed and maintained thereafter in accordance with the approved details.

**** End of Conditions****