



Appeal Decision

Site visit made on 30 October 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 24th November 2017

Appeal Ref: APP/R3325/W/17/3177561

Former Somerton Service Garage Ltd, West Street, Somerton, TA11 6NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Paul Laing (Propgap 1 Limited) against the decision of South Somerset District Council.
- The application Ref 17/01263/S73, dated 15 March 2017, was refused by notice dated 31 May 2017.
- The application sought planning permission for change of use from service station to residential; erection of 6 dwelling houses, revised vehicular access, and associated parking and landscaping without complying with conditions attached to planning permission Ref 16/05155/FUL, dated 26 January 2017.
- The conditions in dispute are No. 2 and No. 5 which state:

Condition 2:

"The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan 1:500; Composite round Floor Plan 1:100; the drawings ref. WSS PL numbers 01A, 05A, 06A, 07A, 08A and 09A; and the access realignment drawing ref. 2015-260 number 102 (part of the submitted Technical Note, LvW Highways, 16 September 2015.)"

The reason given for the condition is:

"For the avoidance of doubt and in the interests of proper planning".

Condition 5:

"No part of the development hereby permitted shall be occupied or brought into use until the works proposed to the vehicular access in the submitted Technical Note (LvW Highways September 2015) to improve the available visibility have been carried out in accordance with a design and specification to be approved in writing by the Local Planning Authority and to be fully implemented in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority. The provision of these works will require a legal agreement and contact should be made with the Highway Authority well in advance of commencing the works so that the agreement is complete prior to starting the highway works".

The reason given for the condition is:

"In the interests of highway safety and to accord with the NPPF and Policy TA5 of the South Somerset Local Plan".

Decision

1. The appeal is allowed and planning permission is granted for change of use from service station to residential; erection of 6 dwelling houses, revised vehicular access, and associated parking and landscaping at the Former Somerton Service Garage Ltd, West Street, Somerton, TA11 6NB, in accordance with the application Ref 17/01263/S73, dated 15 March 2017,

without compliance with condition numbers 2 and 5 previously imposed on planning permission Ref 16/05155/FUL, dated 26 January 2017, and subject to the attached Schedule of Conditions.

Appeal site and background

2. The appeal site, now vacant, was formerly occupied by a garage/service station and lies within the built up area of the town, bordered by dwellinghouses and their gardens, and having access off West Street to the north and Sutton Road to the south.
3. Planning permission (16/05155/FUL) to redevelop the site was granted in January 2017 for the erection of six dwellinghouses with vehicular access onto Sutton Road. Following that approval the application subject of this appeal (17/01263/S73) was submitted which sought planning permission for the same scheme, but with a revision of the approved Sutton Road access details.
4. The parties have referred to published national technical guidance in MfS¹, MfS2², and DMRB³. In considering the parties' respective arguments I have taken full account of the advice in those documents in reaching my decision.

Main Issue

5. The main issue is the effect on highway safety.

Reasons

6. The proposed revised access onto Sutton Road (B3165) sits within a primarily residential area subject to a 30mph speed limit, and the road varies in width from 5.8m to the west down to 4.8m to the east. It is common ground that the proposed revised access achieves an acceptable 2.4m x 43m ('x' and 'y' distances) visibility splay for drivers looking east along Sutton Road and the Council has no objection to that part of the proposed development. The focus of concern relates to the visibility from the proposed access to the west.
7. The NPPF⁴ at paragraph 32 (second bullet point) requires that "*safe and suitable access to the site can be achieved for all people*", and that wording is closely reflected in saved Policy TA5 of the South Somerset Local Plan 2015 (LP).
8. With regard to assessing risk to highway safety the appellant additionally refers to the third bullet point of paragraph 32 which states: "*Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*".
9. However, as established by the Court⁵, paragraph 32 addresses matters of highway capacity and congestion in the context of the severe residual cumulative impact of the development in its third bullet-point, rather than highway safety considerations in the second bullet point. On that basis I do not need to apply a "severity test" to highway safety in determining the appeal. Accordingly, I have reached my decision on the basis of whether the revised scheme results in *any* significant increase in risk to highway safety.

¹ Manual for Streets (2007)

² Manual for Streets 2 (2010)

³ Design Manual for Roads and Bridges (2012)

⁴ National Planning Policy Framework (2012)

⁵ *Mayowa-Emmanuel v Royal Borough of Greenwich* [2015] EWHC 4076

10. Relative to the approved scheme the proposed revised access would reduce the 'x' distance from 2.4m to 2m. Additionally, The 'y' distance to the west would be approximately 26m if the splay is measured to a point which bisects the nearside kerb, or 43m if measured to a point which bisects the nearside edge of the tracked path of a vehicle at 1m out from the kerb edge.
11. Although in some circumstances MfS2 allows for a reduced 'x' distance, and measurement of the 'y' distance to be taken to a point which bisects the tracked path of vehicles along the adjoining main road, the Council and the Highway Authority do not agree that it is suitable to do so in this location.
12. I should first say that I make no criticism of the Council or the HA in pursuing standard formulas for highway access arrangements. Indeed such an approach provides a recognised standard level of safety for road users and helps to provide consistency in decision making. However, it is clear to me, not least from the published technical advice the parties both rely on, that there is room for flexibility depending on the particular circumstances of each situation, and that each case should therefore be considered on its merit.
13. I acknowledge that my observations during my morning visit to the appeal site were limited and not a comprehensive survey, but nonetheless they support the appellant's evidence that the road narrowing and bend in Sutton Road (at its junction with Bartlett Row) causes approaching drivers from the west to reduce speed past the proposed access. In this regard I saw that traffic flows and vehicle speeds were relatively light and slow in both directions, more so with regard to traffic approaching from the west. That the speed of passing vehicles appeared relatively slow is not surprising given the general road layout, including the junction with Great Western Lane, and forward visibility through a built up residential area. I also note that the appellant's evidence in respect of no injury accidents occurring within the area of the appeal site within the last 17 years, and the survey evidence of traffic flows and 25 mph average speeds for east bound traffic is not challenged.
14. A reduction of the 'x' distance by 0.4 m to 2m at the access point would mean that some vehicles would have to protrude out slightly into the main carriageway when exiting the site. However, taking account of the removal of the overgrown bushes at the access point to improve inter-visibility, the low traffic flows into and out of the appeal site relative to six dwellings, and together with the relatively low flows of traffic and low vehicle speed along Sutton Road, I consider that the proposed reduction to 2m would not result in any significant increase in risk to highway safety.
15. Taking the 'x' and 'y' distance together I agree that the visibility splay to the west (measured to the nearside kerb) would be approximately 26m. However, given that any vehicle exiting the access in such a situation might be slightly protruding, I consider that any cyclist travelling east towards the access, and who might be as close as 0.5 metres to the kerb edge, would be able to see the exiting vehicle overhang from a reasonable distance and would be able to manoeuvre around it without any difficulty. I come to the same conclusion in respect of approaching drivers whose line of view would be from a point further out from the kerb edge.
16. Taking account of all the evidence before me, I conclude that in the particular circumstances of this case there would not be a significant increase in risk to

highway safety as a result of the revised access arrangement. As such, there would be no conflict with the NPPF or with LP Policy TA5.

Conditions

17. The Council have suggested a number of conditions which I have considered against the advice in the NPPF and retained Annex A (model conditions) of former Circular 11/95: Use of Conditions in Planning Permissions. Where necessary, and in the interests of precision, I have amended them to bring them in line with the guidance.
18. I have imposed the time limitation condition (1) in which development must commence in accordance with section 91(1) of the Act. Conditions (2,3) are also imposed to require development to be carried out in accordance with the approved plans, and for details of the development to be submitted and approved in the interest of safeguarding the character and appearance of the area. Conditions (4,5,6,8,9) are also imposed in the interest of highway safety. A condition (7) is also necessary to ensure adequate drainage of the site. I have also imposed a condition (10) requiring any identified contamination of the site to be adequately mitigated.

Conclusion

19. For all the above reasons and having regard to all other matters, I conclude that the appeal should be allowed.

Thomas Shields

INSPECTOR

Conditions Schedule

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of planning permission 16/05155/FUL, i.e. before 26 January 2020.
2. The development hereby permitted shall not be carried out other than in accordance with the following approved plans: Proposed Site Plan 1:500; Composite ground Floor Plan 1:100; the drawings ref. WSS PL numbers 01A, 05A, 06A, 07A, 08A and 09A; and the access realignment drawing ref. 2015-260 numbers 106 and 107 (as submitted with letter dated 1 February 2017, LvW Highways).
3. No development shall commence unless particulars of the following have been submitted to and approved in writing by the Local Planning Authority:
 - a) materials (including the provision of samples where appropriate) to be used for external walls and roofs; these details shall be supported by a sample panel of natural stone indicating coursing and pointing which shall be made available on site prior to commencement;
 - b) full design details and material and external finish to be used for all windows, all external doors, lintels, entrance gates, boarding and openings;
 - c) details of all eaves and fascia board detailing, guttering, downpipes and other rainwater goods;
 - d) details of the surface materials for the access road, parking and turning areas;
 - e) details of all boundary treatments; and
 - f) details of finished floor levels.

The development shall be carried out in accordance with the approved details.

4. At the site access from Sutton Road there shall be no obstruction to visibility greater than 0.6m above adjoining road level within the visibility splays shown on the approved plans (drawings No 106 and 107). The visibility splays shall be provided prior to the commencement of the development hereby permitted and shall thereafter be retained at all times. The site access shall be completed in full prior to first occupation of any dwelling.
5. The proposed estate roads, footways, footpaths, cycleways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays and accesses within the site, carriageway gradients, drive gradients, car, motorcycle and cycle parking, street furniture and tactile paving shall be constructed, laid out and retained in accordance with details to be submitted and approved in writing by the Local Planning Authority before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients,

materials, method of construction and proposals for future maintenance shall be submitted to the Local Planning Authority.

6. The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
7. A drainage scheme for the site showing details of gullies, connections, soakaways and means of attenuation on site shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.
8. No part of the development hereby permitted shall be brought into use until that part of the service road that provides access to it has been constructed in accordance with the approved plans.
9. The areas allocated for parking, including garages, on the submitted plan ('Composite Ground Floor Plan 1:100) shall be kept clear of obstruction at all times and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
10. The development hereby permitted shall not begin until a scheme to deal with contamination of land, controlled waters and/or ground gas has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include all of the following measures, unless the Local Planning Authority dispenses with any such requirement specifically in writing:
 1. A Phase I site investigation report carried out by a competent person to include a desk study, site walkover, the production of a site conceptual model and a human health and environmental risk assessment, undertaken in accordance with BS 10175 : 2011 Investigation of Potentially Contaminated Sites - Code of Practice.
 2. A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites - Code of Practice. The report should include a detailed quantitative human health and environmental risk assessment.
 3. A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation should be stated, such as site contaminant levels or a risk management action, and how this will be validated. Any ongoing monitoring should also be outlined.
 4. If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme submitted to and approved in writing by the Local Planning Authority.

5. A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology. Details of any post-remedial sampling and analysis to show that the site has reached the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.