

Report on highways reason for refusal

Application number P/2013/0572

Outline application for proposed residential development (up to 175 units) and associated development including provision of open space, landscaping, ponds and other associated development. All matters reserved for further consideration except access. This is a departure from the Local Plan.

Land Adjacent To The A385 Totnes Road, Collaton St Mary

Executive Summary/Key Outcomes

An appeal has been submitted against the Council's decision on the above planning application. This will be heard at a Public Inquiry scheduled to start in late September. A review of the Council's position has been carried out in preparation for the appeal. As part of this review, independent advice has been sought in respect of the highways reason for refusal. The advice concludes that the reason for refusal relating to highways would be difficult to defend at appeal. As such, and in order to minimise the risk of an award of costs against the Council, this report addresses the issue of whether the Council should continue to defend the highways reason for refusal at the public inquiry.

The substantive reasons for refusal of the application relating to landscape impact and the piecemeal unsustainable development of this site remain robust and the Council is confident of its case in the appeal on these grounds. There are also ongoing discussions with the appellant in respect of ecology and flood risk, as is required by the duty to cooperate in the lead up to an Inquiry.

Recommendation

That the Council does not continue to defend the appeal on the ground of highways. Recent further work on the case has shown that it would be difficult for the Council to make a robust case that the development would result in a residual cumulative impact on the highway that is severe. Guidance in the NPPF (para. 32) is clear that development should only be refused on transport grounds where it would result in a 'severe' impact. At this stage it appears likely that the Council would be unable to provide sufficient evidence to defend the highways reason for refusal. Without a defensible case on highways the Council would be vulnerable to an award of costs.

It should be noted that the appellant could make a claim for costs against the Council based on not continuing to defend a reason for refusal of planning permission. There is a risk that the appellants could take the view that the Council has acted unreasonably in relying on a reason for refusal which it now considers would not

stand up to scrutiny. The risk of an award of costs would be reduced by making the decision not to continue to defend the highways reason for refusal at this stage. Advice in Planning Practice Guidance is that costs may be awarded on the basis that “unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process”. By withdrawing the highways reason for refusal at this stage the costs incurred by the appellant would be significantly less than if the Council pursued this ground and was unable to provide substantive evidence to justify its case. As such, the exposure to a potential award of costs would be very limited and Officers are confident that the Council will have acted reasonably in taking this step at an early a stage as possible in the appeal.

Background

Application reference P/2013/0572 for the above development was refused planning permission by notice dated 21st August 2013. Reason for refusal number six on the decision notice states;

The development through the provision of an additional two new highways junctions will impede the free flow of traffic along the A385 Totnes Road, contrary to policy T18, of the Saved Adopted Torbay Local Plan 1995-2011 which seeks to ensure that new accesses on to the major Road Network do not reduce road safety or detract from or conflict with the function of the route and the objectives of paragraphs 32 and 34 of the NPPF.

A copy of the Strategic Transport consultation response that was taken into consideration when the decision was made on the application is attached to this report.

The reason for refusal refers only to the provision of two new accesses to the site from the A385. The issue of an increase in vehicular traffic on the highway network as a result of the development is not part of the reason for refusal. A previous planning application for a larger volume of development on the site under application reference P/2012/1037 which was for 197 dwellings and a local centre utilising a single access point was refused planning permission without a highways reason for refusal. In both of the planning applications the overall traffic generation of the site has not been challenged by the Council. As there was no highway reason for refusal on application reference P/2012/1037 the implication is that a single point of access to the site is acceptable in highway terms to the Council.

Therefore the highways reason for refusal relates only to the provision of a second access onto the A385 Totnes Road.

The Policy references in the reason for refusal refer to Policy T18 in the Torbay Local Plan 1995-2011, and paragraphs 32 and 34 of the NPPF. Policy T18 states;

“New access points to the Major Road Network will not be permitted where they would reduce road safety or detract from or conflict with the function of the route”.

In paragraph 32 of the NPPF it is advised that

“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe”.

Paragraph 34 advises that;

“Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas”.

The Policy context outlined above and referred to in the reason for refusal means that the Council would have to demonstrate that the impact of the additional access on the safety and function of the A385 Totnes Road would be severe in order to defend its case at the inquiry.

Recent work on the Churston Golf Club Inquiry and advice from PINS in respect of local plan production has increased awareness of the strictness of this test.

In their grounds of appeal the appellant states that in their opinion the proposed two points of access to the site would not impede the free flow of traffic and in fact would be likely to reduce interruptions to the flow of traffic;

“It can be demonstrated that the introduction of this additional site access junction would, if anything, reduce the likelihood of interruptions in the free flow compared to a single point of access. The principal cause of delay that will materially affect free flow on the A385 is the right turn movement into the site but the use of two ghost island right turn lanes, designed to appropriate standards, will provide twice the stacking reserve, thus reducing the risk of waiting traffic blocking back into the westbound mainline flow.

Furthermore, two points of access help to spread the impact of traffic internally and reduce the impact on pedestrians and cyclists with dispersed traffic volumes. This would also result in an improved quality of design providing better focus on place within the development.

The Appellant will seek to demonstrate that the proposals are in compliance with policy T18 of the Saved Adopted Torbay Local Plan 1995-2011 and with the objectives of paragraphs 32 and 34 of the NPPF”.

In preparation for the public inquiry, the Council has reviewed its position which has included considering how robust the reasons for refusal are. As part of this process the Council has sought independent advice from Jacobs in respect of the highways reason for refusal and whether it is likely that it could be successfully defended at the

appeal. A copy of this report is attached at the end of this report. Jacob's conclusion is that the highways reason for refusal would be difficult to defend.

Jacobs advise that it is not considered that the two proposed accesses are overly close together, they are approximately 160m apart, and, if built to current highway standards, with improved visibility splays as proposed, both would be able to provide a safe and suitable access for the proposed users. They conclude "it is therefore considered that the residual impact of two accesses on the function of the route is therefore also unlikely to be severe".

Conclusion

The Jacobs report concludes that the highways reason for refusal should not be taken to appeal because the residual impact of the additional access would be unlikely to be considered to be severe. Following this advice it is doubtful that the Council would be able to produce the necessary evidence to substantiate the reason for refusal which would be needed to defend the case at appeal. Discussions have been held with highways officers and although they are of the opinion that a single point of access to the site would have less impact on the free flow of traffic they have not provided evidence to justify this position.

Without an objective analysis of the proposals impact, the Council would be in a weak position and would be vulnerable to an application for an award of costs on the grounds of relying on a reason for refusal that would fail to stand up to scrutiny. In order to limit a vulnerable situation and for the Council to behave reasonably in the appeal process it is recommended that the highways reason for refusal should not be defended at the inquiry.

The substantive reasons for refusal of the application relating to landscape impact and the piecemeal unsustainable development of this site remain robust and the Council is confident of its case in the appeal on these grounds. There are ongoing discussions with the appellant in respect of ecology and flood risk, as is required by the duty to cooperate in the lead up to an Inquiry.