

DIRECTORATE OF CITY STRATEGY

MEMORANDUM

From: Peter Evely, Head of Network Management

Extn: 1414

To: Members of the West and City Centre Planning Sub Committee

Cc: Mike Slater, Bill Woolley, Martin Blythe

Date: October 16, 2006

Ref: 06/00103/FULM

Planning Appeal – 26 – 28 Tadcaster Road

I write in my capacity as Head of Network Management and in the light of the responsibility I have for providing advice to the Council on matters concerning the management and movement of all users of the public highway. Under the Traffic Management Act 2004 I am also the councils Operational Traffic Manager. In that position I have a responsibility for discharging the Statutory function imposed by that Act to:

secure the expeditious movement of traffic on the authority's network

In this context the word 'traffic' means people on foot or using cycles as well as vehicles. In other words I am responsible for maximising the efficient use of the highway by all users so as to minimise delay to all users. With that need in mind I therefore approach any advice given to the Planning Committee from the perspective of producing an end result that respects these obligations. Not to do so would be a serious breach of the Statutory Duty.

I have over 30 years experience in the field of traffic planning and management, 28 of these in a senior position. In that time I have dealt with thousands of planning applications of all sizes including two major town centre regeneration schemes and a significant number of Planning Inquiries.

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On my behalf my Officers have been advising Members in connection with an application for a development at 26 – 28 Tadcaster Road.

Background

The original application for this site was considered by Members on the 20 January 2005. My advice to the Committee at that time was that there were no issues of a highway/traffic related nature that would justify refusal. That advice was rejected and the application refused on several grounds, one of which was that “the proposal would result in the intensification of use of an unsuitable access point that would create a hazard to highway users.”

The developer submitted a revised application for less dwelling units and this was considered by the Committee on the 16 March. Again my advice was that there were no issues of a highway/traffic related nature that would justify refusal. That advice was also rejected and the application refused. The justification for refusal was on two grounds, one of which was for highway reasons. Despite the application being on a smaller scale than that considered in January 2005 the stated reasons for refusal were far more extensive and detailed than those made in January.

The developer appealed against refusal and a Public inquiry is to be held.

At its special meeting on the 3 October the Committee received a report from the Assistant Director (Planning and Sustainable Development) which outlined serious concerns over the ability of the council to sustain the stated reasons for refusal at Public Inquiry and recommended that the highway reasons for refusal were withdrawn. As that meeting Members heard that an Independent specialist Transport Consultant had been engaged to review the advice given by my officers. They were told that this Consultant supported the advice previously given and that there were no grounds for supporting a highway reason for refusal. Members elected not to accept either piece of advice but deferred the matter for further consideration at the meeting on the 19 October after additional work had been undertaken by the Consultant.

My purpose in writing is two fold. Firstly to advise that this additional work has not been undertaken due to the cost and evidence that such work would provide to the applicant in support of his appeal. Secondly to explain the position that the council will find itself in should the Highway grounds reason be continued through the Public Inquiry.

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Additional Consultancy work

As a business the Consultant provided a fee for undertaking the work requested by Members. This work would have cost £2,950 in addition to which the council would have had to have paid directly for its own enumerators to undertake traffic surveys needed by the Consultant to complete his work. The Consultants, however, advised that the completion of the commission would not alter their view that there were no highway grounds for justifying a refusal of planning consent.

It was and is my view that the extra information that would have been obtained by the Consultant would have strengthened the case for granting planning permission.

The Council's case at Public Inquiry

To sustain the Committee's objection at appeal it will be necessary to prove the following statements made in the reasons for refusal are true:-

1. "unacceptable increase in the level of vehicle movements using this access point"
2. "traffic increase would be greater than the maximum number of potential movements that could reasonably be expected if the garages at the site were to be fully reused for vehicles"
3. "traffic movements associated with the development here would be significantly greater than the existing (and any future likely) vehicular use of the garages"
4. "The proposal would result in the intensification of use of an unsuitable access point causing interference with the free flow of traffic and a consequent danger to highway and pedestrian traffic"

These statements all in effect say the same thing – there will be greater vehicular use of the site causing unacceptable danger due to the access arrangements.

So what is the use when the development has been built? Table 1 below gives the movements that could be anticipated if the council were to use the nationally accepted rates of generation for residential development in this sort of location. These are HIGHER than a typical situation in York.

Table 1

	Arrivals	Departures	Total
AM Peak	2	6	8
PM Peak	6	3	9

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In other words during the peak hour the site if developed as proposed would generate around 8 vehicle movements in each peak hour.

So how does this compare with the flow on Tadcaster Road? Table 2 gives the AM and PM situation with a mean flow and the typical variation range.

Table 2

	2 Way Flow	Daily variation
AM Peak	1600 vph	+/-209
PM Peak	1600vph	+/-89

In other words the additional 8 vehicles an hour in the peak will be reflected in the existing peak flow which has a significant daily flow variation substantially greater than the 8 involved.

Clearly that 8 vehicles will join at a busy traffic light junction so will that cause problems? The Institution of Highway Engineers, The Institution of Civil Engineers and the guidance issued by the Highways Agency concerning the assessment of the impact of developments upon Trunk Roads state that variations in flow of less than 50 vehicles per hour will have no material impact upon the operation of Traffic Signal junctions.

Assuming that the 8 vehicles per hour is still of concern, how is such a volume viewed in the light of National and the Council's own policies?. The Institution of Highway Engineers and the CyC guide on Transport Impact Assessments state that no account should be taken of the impact of a development if its generated traffic impact is less than 5% of the current flow. For Tadcaster Road that would be about 80 vehicles per hour or ten times that generated by this site, if it were a green field.

This site is, however not a green field. In Planning law the council are obliged to take in to account the so called Fall Back consideration. What this means is that the current land use must be taken into account when considering the grant of consent for a new land use. Where this has not been taken into account Courts have overturned planning and appeal decisions. Table 3 shows what the site could generate were it to be used to the full extent of its current planning permission.

Table 3

Existing Land use

- 2 No Detached houses
- 1 No Detached bungalow
- 13 No Lock up garages

	Arrivals	Departures	Sub Total	Total
AM Peak				

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Homes	1	1	2	
Garages	1	4	5	7
PM Peak				
Homes	1	1	2	
Garages	4	1	5	7

Table 4 therefore shows the intensification of use of this actual site.

Table 4

	Fall Back	Development	Difference
AM Peak	7	8	1
PM Peak	7	9	2

What the above says very clearly is that:

- a The site will generate between 1 and a maximum of 8 extra vehicles in the peak hour
- b This generation is 1/10th or less than the council's own guides say should be taken into account when considering if traffic movements are significant
- c The generation is 1/6th or less than would be considered by a range of authorities as likely to cause adverse impact upon the operation of the adjacent traffic signals.

In terms of the access:

- a It is unusual to have an access through a bus layby. It is however, not unique either in York or in the country
- b In terms of the frequency of use likely this is, at an average of one every 7.5 minutes, easily comparable with access to private dwellings where a bus stop is located on highway – of which there are hundreds in York and millions around the country
- c If the council had considered this use to be dangerous with the current land use permission they had the power to deal with it, either by relocating the bus stop or using a Section 124 Order under the Highway Act. No such action was take or has ever been discussed.
- d The visibility for drivers existing the new entrance exceeds the national and council standards for visibility

Prospects for Council success at a Public Inquiry

An Inquiry examines facts, not opinions. The Council has to defend its decision based upon the facts. A statement of fact not substantiated is not a fact. The Committee cannot place facts before an Inspector other than those I have described above since no others exist.

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This is not a case where Officers on the balance of probabilities consider that a development is acceptable but Members, again on the balance of probabilities consider that it is not. There is no fine line here. The evidence is clear cut and unequivocal. No amount of work by Officers or Consultants will alter the basic facts of the case and those facts do not support refusal on highway ground.

On the basis of these facts no case against the development proceeding can be substantiated using national or CyC policies and thus the prospect of convincing an Inspector that there is a valid highway reason for refusal is Nil.

Other Considerations

CyC Professional Traffic Officers have considered this development on TWO separate occasions prior to Members refusing permission on the 16 March and are on record as stating that neither the current scheme nor the slightly larger one, would raise any highway concerns.

Independent Consultants have considered the current application and reviewed the Officers highway advice. They conclude that the application is acceptable on highway grounds

At Public Inquiry the CyC Officers views and those of the Consultant will be made known to the Inspector by the applicant as this strengthens their case.

Given that Officers views have been presented clearly, have been supported by Independent Consultants and both advise that there are no grounds for sustaining a highway reason for refusal, the Inspector is almost certain to conclude that the Applicant has been put to an expense that he had no right to be subjected to.

Summary

Members are advised that the possibility of providing evidence to back up the highway reasons given by the Local Planning Authority for refusing to grant Planning consent is Nil.

Members are further advised that the possibility of an Inspector giving sufficient weight to the view of Members that permission should be refused so as to reject the appeal by the developer is probably less than 1%.

Members must recognise that the possibility of the Inspector considering that the highway reason for refusal is vexatious and unfounded is greater than 99% and thus also recognise that costs will be awarded against the Council.