
Appeal Decision

Site visit made on 24 January 2017

by V Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 1st February 2017

Appeal Ref: APP/P3420/W/16/3161622

Old GPO Exchange, Blore Road, Hales, TF9 2PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M. S. Cole against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 16/00629/FUL, dated 27 July 2016, was refused by notice dated 16 September 2016.
 - The development proposed is conversion and alteration of existing disused telephone exchange into single dwelling.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Newcastle-Under-Lyme Borough Council against Mr M. S. Cole. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - The effect of the development proposed on highway safety, with particular regard to the provision of suitable visibility splays and on-site parking provision;
 - The effect of the development proposed on the character and appearance of the area, with particular regard to a visually significant oak tree.

Reasons

4. The appeal site is currently occupied by a small commercial building that was previously a telephone exchange. The development proposed would see the conversion and alteration of this building to form a dwelling.
5. My attention has been drawn to the planning history for the site which includes several applications for similar proposals that have been refused by the Council and a recent appeal¹. The previous Inspector concluded that the appeal proposal was in a sustainable location for new housing. However, the appeal was dismissed on the grounds of highway safety and the impact on a visually

¹ APP/P3420/W/15/3135956 Decision date: February 2016

significant oak tree. The previous Inspector referred to the lack of evidence regarding the effect of the proposal on highway safety and trees in reaching her decision. The appellant has since commissioned this evidence. The appeal proposal before me is therefore similar to the previous appeal scheme. However it is now accompanied by specific highway safety and tree evidence, thereby seeking to overcome the previous Inspector's concerns.

Highway safety

6. The appeal scheme proposes a new point of access on to Blore Road. The plans also show that a driveway with a turning and parking area would be provided. The Highway Authority has requested visibility splays of 45m in both directions be provided in order to ensure that safe and suitable access to and from the proposed dwelling could be achieved.
7. The Traffic Report submitted by the appellant observes that the road is lightly trafficked, which is what one might expect for a rural road. During the traffic survey undertaken, vehicle speeds were observed at being between 52.17 kph and 51.66 kph (or approximately 32 mph). On that basis, the report advises that minimum stopping sight distance in both directions should be 45m. This reflects the Highway Authority's position.
8. The appellant's traffic report acknowledges that the proposed visibility splays would not fully comply with relevant design standards. Indeed, the actual visibility splays proposed would be approximately 2m x 4m to the west and 2m x 17m to the east.
9. Blore Road is a narrow country road with passing places. It is lined by a mature hedgerow on both sides. It has a speed limit of 60 mph. Although two cars may be able to pass side by side this would be likely done at slow speed and carefully due to the restricted width of the road. If a tractor or large vehicle were to be travelling along the road then another vehicle would not be able to pass freely. There is also no pavement connecting the appeal site to the village therefore pedestrians, cyclists and horse riders are also required to share the road surface with other road users.
10. Whilst the hedgerow along the front of the site would be removed as part of the proposal, the site frontage is narrow. The hedgerow on neighbouring land is tall and extends in a linear pattern for a considerable length in both directions. Vehicles emerging from the proposed access into the road would have severely restricted views in both directions due to the length and height of the hedgerow. It would be necessary for drivers to enter on to the highway in order to get a good line of sight so as to judge whether it would be safe to pull out of the proposed access safely. This would result in part of the vehicle obstructing the road whilst the driver executed this manoeuvre.
11. Although the road may be lightly trafficked and relative vehicle speeds may be lower than the 60 mph permitted, a car entering the highway unexpectedly at this point would result in a potential risk to other road users including cars, cyclists and pedestrians, as this would be an unexpected manoeuvre in a confined, narrow country road. Whilst the appellant's report states that drivers travelling along the road may be able to see a vehicle at the site access, this relies on the driver of that vehicle doing so and having to predict that the car may exit the site and to undertake necessary avoidance measures. This would clearly be an unsatisfactory and unsafe situation.

12. In order to provide the necessary visibility splays, I consider that it would be necessary to remove a much larger section of hedgerow that is on neighbouring land and outside the control of the appellant. Additionally, the removal or realignment of such a large section of established hedgerow would fundamentally alter the rural appearance of the road and this would be harmful to the visual amenity of the area.
13. Whilst the majority of existing driveways in the village along the road may not comply with relevant design standards regarding visibility splays, they are historic accesses. As safety standards evolve over time it would not be reasonable to expect all existing access to be upgraded to take account of them and it is therefore a fairly common situation found in most areas and not a reason that would in itself justify failing to require new accesses to meet up to date standards. I note that there have been no recorded accidents to date on the road close to the appeal site, however this does not overcome the concerns I have identified.
14. The appellant has submitted plans at appeal stage which show the proposed building reduced in size in order to provide a larger parking and turning area. However, even if I were to take account of this plan, I am not satisfied that a second vehicle could enter the site and have the space to manoeuvre within it so as to exit onto the highway in a forward gear. In the event that future occupants had more than one vehicles or visitors to the dwelling arriving by car, it would therefore be necessary for vehicles to reverse out of the site into the highway. A vehicle reversing onto the highway at this point would give rise to highway safety concerns as given the restricted visibility of the site access that I have described, this manoeuvre would be likely to be particularly hazardous to both the driver of the vehicles itself and other road users. I consider it unlikely that a vehicle would be left parked on the road itself due to the restricted width of the road and the risk of it causing an obstruction due to other vehicles not being able to pass safely.
15. Accordingly, I conclude on this main issue that development proposed would be harmful to highway safety with particular regard to access and on-site parking provision. The proposal would therefore conflict with policy T16 of the Council's Local Plan (Adopted October 2003) (LP) which seeks to ensure that development should provide adequate access space.

Visually significant tree

16. The front boundary of the site is defined by a hedgerow and there is a large mature oak tree immediately adjacent to the site in the neighbouring field. The development proposed would result in a large section of the hedgerow being removed. The Inspector in the previous appeal considered that this element of the scheme would be acceptable. The specific issue that is before me relates to the effect of the proposed access, driveway and parking area on the oak tree.
17. The oak tree is not covered by a Tree Preservation Order but it is nonetheless a significant and attractive feature that makes a highly positive contribution to the rural character of the area. It is a tall specimen with a large canopy and the spread of the tree extends across the appeal site. This is normally a good indication that the roots of the tree will extend into the appeal site also.

18. The appellant has submitted a Tree Survey and Arboricultural Impact study dated February 2016. It identifies the oak tree as a Category A tree which is defined as a tree of high quality with an estimated remaining life expectancy of at least 40 years. The report comments that it is in good condition, is of high amenity value and merits retention. It is noted that this tree will form a constraint to the site. The report recommends Tree Protection Fencing combined with no dig surfacing and no alteration in ground level in the RPA i.e. the drive would have to slope up as it entered this area (page 13).
19. Taking account of the plans submitted, including those at appeal stage, there does appear to be a difference between the visibility splays and root protection area for the oak tree. Part of the visibility splay would pass through the RPA as shown on the plans submitted. The hedgerow along the edge of the road is set slightly higher than that of the highway surface. Land levels rise again beyond the edge resulting in the oak tree and the appeal building being higher than the ground level of the road. The visibility splays would need to be kept free from obstruction and it is not clear to me whether it is proposed to remove earth along with the hedgerow in order to maintain the visibility splays that would need to be provided to ensure a safe and suitable access.
20. The appellant has stated that the rise in ground levels from the highway to the entrance steps proposed could be accommodated within the natural incline of the site. However, I consider that the provision of the access and associated visibility splays would be likely to require some alteration in the ground level to take place within the RPA and without further detailed drawings showing how this could be otherwise achieved I consider that there is a risk of damage occurring to the established roots of the oak tree as a consequence of the proposal.
21. For these reasons, I am concerned that the visibility splays as shown would be likely to require some alteration of ground levels within the RPA for the oak tree as shown. Digging in the RPA area would risk damaging the established root system of the oak tree which would be likely to affect the health and longevity of the tree inevitably leading to its eventual loss or severely limiting its natural life span. The loss of the oak tree would be harmful to the visual amenity of the area as it is a significant structural feature that makes a highly positive contribution to the rural character of this part of the village.
22. I am satisfied that the other trees identified on the site plan would not be harmed as a consequence of the development proposed and subject to the protection methods identified in the appellant's tree report.
23. Accordingly, I conclude that the development proposed would be harmful to the character and appearance of the area, with particular regard to the visually significant oak tree. Whilst the appeal scheme may not directly propose the removal of the oak tree, damage to its roots over time would be likely to result in its eventual loss and the curtailment of its natural life span. For these reasons, whilst I note the comments of the previous Inspector, I consider that the proposal would conflict with policy N12 of the LP which seeks to resist development that would involve the removal of any visually significant tree.

Other Matters

24. I acknowledge that there are elements that weigh in favour of the appeal proposal. These include that the previous Inspector concluded that the

proposal would not be an isolated form of development for the purposes of paragraph 55 of the National Planning Policy Framework (Framework) and would support the social activities in the village, helping to maintain the vitality of the community. The proposal would also see the re-use of an existing building and would result in the creation of an additional dwelling. These are matters that weigh moderately in favour of the appeal scheme due to the small scale nature of the development proposed.

25. Based on the information before me, the design of the proposed dwelling would also be acceptable, as would drainage and the provision of bin storage space. These are however neutral matters whereby a lack of harm does not weigh in favour of the appeal proposal. Whilst energy considerations are referred to it is stated that these are being considered, not that there is a firm intention to incorporate them into the design of the proposal.
26. The previous Inspector acknowledged that future occupants of the proposed dwelling would inevitably use the car to access day to day goods and services. Whilst she considered that this was outweighed by the social benefits of the proposal, it is nonetheless a matter that does not weigh in its favour. Although I acknowledge that the traffic generated by the proposal would be small scale.
27. As the Council is currently unable to demonstrate a five year supply of housing land, the Framework's presumption in favour of sustainable development is a relevant consideration in my determination of this appeal (paragraphs 14 and 49). As policies T16 and N12 of the LP deal with matters relating to parking and access and the protection of trees, the intention of the policies is not to seek to control the supply of housing land. As such, they should be considered up-to-date for the purposes of paragraph 49. Paragraph 211 confirms that policies should not be considered out-of-date simply because they were adopted prior to the Framework. Seeking to conserve the natural environment and that safe and suitable access can be achieved are policy objectives that are broadly consistent with the Framework (paragraphs 17 and 32). I therefore attach weight to these policies in accordance with paragraph 215 of that document. In this case, therefore the relevant development plan policies are not absent, silent or out-of-date for the purposes of paragraph 14.
28. Drawing matters together, I have concluded that the proposal would be harmful to highway safety, with particular regard to the provision of suitable visibility splays and on-site parking provision. Additionally, I have found that the provision of the required visibility splays would be likely to conflict with the requirement not to alter ground levels within the RPA of the visually significant oak tree and that this would be likely to be harmful to the long term health and vigour of the tree. I therefore conclude that this harm does significantly and demonstrably outweigh the benefits I have identified.

Conclusion

29. For the reasons given above, I conclude that the appeal should be dismissed.

V Lucas-Gosnold

INSPECTOR