

Appeal Decision

Site visit made on 31 January 2017

by Louise Nurser BA (Hons) Dip UP MRTPI

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

Decision date: 15 February 2017

Appeal Ref: APP/T2405/D/16/3166022

11 Old Church Road, Enderby LE19 2ED

- 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 Hamdi Sameer Hamdi Almasri and Dr Reeta Herzallah against the decision of Blaby District Council.
 - The application Ref 16/0963/HH, dated 3 August 2016, was refused by notice dated 29 September 2016.
 - The development proposed is retention of front parking area and revised vehicular access point, ancillary residential accommodation with associated external alterations and boundary treatment.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Hamdi Sameer Hamdi Almasri and Dr Reeta Herzallah against Blaby District Council. This application is the subject of a separate Decision.

Procedural matter

3. At the time of my site visit, the garage had already been converted into living accommodation and an area for off street parking off Old Church Road had been enclosed and integrated within the rear garden. Works had been undertaken to the front garden to provide replacement off street parking and a direct vehicular access to the B4114. However, for the avoidance of doubt I confirm that my determination of the appeal is based on the drawings submitted and not on the works as constructed.

Background and Main Issue

4. The main issue in this case is the effect of the new vehicular access on highway safety.

Reasons

5. The appeal site is part of a modern development which is accessed from a single purpose built junction off the B4114, the design of which is similar to that which was approved as part of the nearby development allowed on
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appeal¹. Both developments include a tapered lane to enable vehicles to slow down safely before entering the housing estates. Indeed, the dedicated access to serve the housing development, so as to avoid the need for vehicles to slow right down on the carriageway, prior to negotiating the turn was explicitly referenced within the appeal decision.

6. From what I observed, at the time of my site visit which took place in the middle of the day, and which of necessity must be a snap shot in time, traffic travels along the B4114 around the 50 mph speed limit. This observation is consistent with the appellants' evidence which reported a combined 85th percentile southbound vehicle speed of around 50.97 mph and I note that some traffic has been recorded significantly faster. I also observed that the dual carriageway appeared busy, a conclusion shared by the Inspector when considering the site opposite, albeit, he concluded that it was not operating at full capacity.
7. The new vehicular access is located just before the tapered junction. Consequently, from the evidence before me, and from what I observed on site I conclude that whilst adequate visibility could be provided for vehicles accessing the dual carriageway, the impact of an additional access would be to increase the risk of serious accidents when cars turn into the drive at no 11 Old Church Road, or when joining the dual carriageway. Due to the volume and speed of traffic it is likely that drivers along the southbound carriageway would be required to slow down earlier than would be expected and the introduction of additional unnecessary movements, even taking into account the recommendations made by Bancroft Consulting, would impede traffic flows and increase the risk of collision with other vehicles in both lanes. In coming to this conclusion, I am aware that there has already been a serious accident in close proximity to the existing junction, although I have not been provided with any details.
8. I noted a number of older properties including commercial enterprises have direct access onto the dual carriageway, including an older residential property next door to the appeal site. Nonetheless, these accesses, unlike the appeal site, are not immediately adjacent to the tapered junction and appear visually separate to the housing estate. Moreover, as far as I am aware they do not have an alternative means of accessing the B4114.
9. Whilst these accesses may have operated safely in the past, the fact that such accesses exist does not undermine the policy approach within Policy IN5 of the 6Cs Design Guide, adopted 2007 (6Cs), that on B roads that there will normally be restrictions on new accesses for vehicle on roads with a speed limit over 40 mph and that where access can be gained off a minor or side road, that this should normally be considered preferable. I consider that this guidance, which is material consideration in my determination of the appeal, should be afforded significant weight and is consistent with Table 1.1 of the Manual for Streets Wider Application of the Principles 2 (MfS2), which suggests that its principles, including those relating to frontage access, can be applied to roads even achieving speeds of over 50 mph, subject to local context. To my mind, the Council has considered the local context in determining this appeal. As such, this is consistent with the approach within Appeal APP/F2415/A/09/2117711.

¹ APP/T2405/A/11/2154502

² Published September 2010 Chartered Institution of Highways and Transportation

10. As part of my site visit I noted a number of parked cars, and have no reason to doubt, that outside of work hours, there would be more cars parked within the estate. I also noted the damaged barrier, close to the converted garage, and similarly accept that, at times, it may not necessarily be easy accessing the short spur road which serves the triple garage block and the garage and off street parking space associated with the appeal site. Nonetheless, this layout, which may not achieve the current standards, was considered appropriate when the original planning application for the whole site was determined, and appears similar to many modern developments. In the absence of any reports of serious accidents within the estate there is nothing to suggest that vehicles travelling at low speeds would raise a risk of serious injuries. It is not part of my case, to consider the highway merits of the approved application, but rather to consider the impact of the appeal before me, including the implications of the conversion of the garage, and the enclosure of the garden on highway safety and subsequent requirement for a new access and off street parking.
11. I have been provided with a number of appeal decisions and a Court Judgement³ which I have carefully considered and have not found determinative in context of the appeal before me. In the context of the particular circumstances of this appeal, including the speed and volume of traffic along the B4114, the proximity of the junction, and the existence of a purpose designed access to serve the appeal site, I consider that the loss of the off street parking and the subsequent compensatory provision of an alternative access, would not result in the provision of a safe and suitable access to the site. As such, the residual impacts of the development would be severe. It has been argued that Paragraph 32 of the Framework had been erroneously applied in determining this appeal. Even were I to agree, the development would not create a safe and secure layout, and would therefore be contrary to Paragraph 35 of the Framework.
12. As such, the new access and loss of the off street parking, including the garage would be contrary to Paragraph 32 of the Framework and Policy IN5 of the 6Cs, and saved Policies T6 and T7 of the Blaby Local Plan, and would not be sustainable development for which there is a presumption in favour.

Other matters

13. I note that a letter of support has been received in relation to the proposed development and that the converted garage is used to provide accommodation for the appellants' nanny. However, these matters do not outweigh the concerns outlined above.

Conclusion

14. For the reasons above the appeal should be dismissed.

L. Nurser

INSPECTOR

³ EWCA Civ 1386