

Appeal Decision

Site visit made on 3 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 26th May 2017

Appeal Ref: APP/D0840/W/17/3166421
79 Mongleath Road, Falmouth TR11 4PN

- 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 and Mrs Stuthridge against the decision of Cornwall Council.
 - The application Ref PA16/09968, dated 24 October 2016, was refused by notice dated 23 December 2016.
 - The development proposed is *"to provide vehicular access and a hardstanding for 3 vehicles on our property"*.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Cornwall Council against Mr and Mrs Stuthridge. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposed access on highway safety.

Reasons

4. The proposed access and hardstanding would be formed in the front garden of the appeal property by removing part of the boundary wall, crossing the footway and installing a dropped kerb adjacent to the carriageway.
5. The footway in front of the appeal property is reasonably wide, as is the carriageway itself. There are yellow 'Keep Clear' road markings restricting vehicle parking on the carriageway in front of the appeal property, extending along the road to the east. There is a speed table immediately to the west which I understand is also used as a crossing point for school children.
6. Visibility from the access to the west would satisfy the Manual for Streets (MfS)¹ recommendation of 43 metres, when measured 2.4 metres back from the carriageway and would therefore provide adequate visibility in that direction. However, visibility to the east would be much lower, largely due to the curvature of the road and its gradient, together with the presence of high boundary vegetation in the adjoining front gardens. Consequently, the visibility to the east would be significantly substandard according to the MfS.

¹ DCLG 2007.

7. During my visit, I observed that the road was a reasonably busy urban route. Notwithstanding the presence of the speed table and other speed influencing factors such as parked cars and other vehicular accesses, it seemed to me that most vehicles were approaching the appeal site at speeds at or around the 30mph speed limit. Consequently, measuring visibility at a minimum distance of 2 metres back from the carriageway would not be appropriate in terms of MfS and Manual for Streets 2 (MfS2)² recommendations, as this is not a slow-speed situation or a lightly trafficked rural lane.
8. Moreover, using the 2-metre measurement would lead to the front of vehicles intending to emerge from the access protruding onto the carriageway. This would also occur by adopting the 'creep and peep' approach suggested by the appellants. During my visit, I saw that vehicles approaching the appeal site from the east were only following a course closer to the centre of the carriageway when they were passing cars parked further along the road. However, vehicles generally tended to move back across the carriageway towards the kerb line once reaching the parking restriction, well before they became visible from the appeal site. Therefore, any theoretical advantage to visibility from the access afforded by vehicles continuing to travel closer to the centre line of the road as they approached the appeal site would be unlikely to occur in practice.
9. As a result, any drivers emerging from the access would have a more restricted view of oncoming vehicles than that suggested by the appellant. Oncoming vehicles would also have a more limited distance in which to manoeuvre around any vehicles emerging from the access. Accordingly, taking the likely speeds of oncoming traffic into account, there would be a much greater likelihood of vehicles having to undertake sudden braking or turning movements in order to avoid vehicles edging out onto the carriageway from the access. Drivers of emerging vehicles might exercise caution due to the visibility constraints. However, this is unlikely to reduce the risk associated with oncoming traffic. This is because based on what I observed, oncoming drivers could not necessarily be relied upon to adopt a similar level of caution. Consequently, all vehicles would be placed at a much higher risk of collision.
10. An appeal concerning a vehicular access to the appeal property was dismissed in March 2008 on highway safety grounds, due to inadequate visibility from the appeal property to the east³. That scheme appears to have involved a wider access across the whole frontage of the appeal property. In the intervening period there have been physical changes to the road layout, including installing a speed table to replace speed humps and introducing parking restrictions. Otherwise however, the road geometry is similar and overall conditions are not fundamentally different to the previous appeal. Changes in local and national planning policies have not materially changed how matters of highway safety are assessed. Therefore, the previous appeal decision should still carry substantial weight.
11. I acknowledge that 'creep and peep' has been accepted elsewhere in Cornwall as a basis for reduced levels of visibility from vehicular accesses, including on A and B Class roads. The approach could be acceptable in some instances where road conditions provide for reasonable levels of inter visibility between vehicles emerging from an access and approaching traffic and all drivers exercise

² Chartered Institution of Highways & Transportation 2010.

³ Ref: APP/P0810/A/07/2057151.

caution. Nevertheless, for the reasons given above I am not persuaded that such circumstances apply here. Moreover, the circumstances in each of those appeals seem to be significantly different to the scheme before me in terms of the road conditions.

12. The presence of a school crossing close to the appeal property does not lend any weight in favour of the access, as approaching drivers are likely to have much more advanced warning of pedestrians crossing the road. The existence of other residential accesses with restricted visibility further along the road is not in itself a good reason for allowing a further substandard access. Whilst there might be an absence of accident data in the vicinity of the appeal property and nearby residential accesses, I give that matter only limited weight as it is not a reliable indicator of what might happen in future. The boundary vegetation is not in the appellants' control. Consequently, the suggestion that some of it will be removed to improve visibility can only be afforded little weight.
13. I understand that the appellants can no longer park on the road in front of their property due to the parking restriction. Even so, the appellants appear to have a garage in a communal block which can be accessed at the rear of their property and that there are other opportunities for on-street parking in the locality. Although I appreciate that those alternatives may be less convenient, their existence does not lend any weight in favour of the proposal. I also note the appellants' comments regarding whether the road speed should be 20 mph. However, I have to deal with the appeal on the basis of the existing speed limit. The possibility of continued on-street parking of vehicles in front of the appeal property would not outweigh the harm to highway safety caused by the access and in any event, it is unlikely to be a realistic 'fallback' position, having regard to the parking restriction. Enforcing that restriction is not a planning matter. Even so, there is no firm evidence before me to suggest that it cannot be enforced.
14. For the above reasons, the access would cause unacceptable harm to highway safety conditions. Therefore, the access would not accord with Policy 27 of the adopted Cornwall Local Plan. It would also be inconsistent with paragraph 32, bullet point 2 of the National Planning Policy Framework (the Framework), as it would not provide safe and suitable access to the site for all people. Recent case law⁴, has confirmed that paragraph 32, bullet point 3 of the Framework addresses matters of highway capacity and congestion, rather than highway safety considerations in themselves. Therefore, the access would not need to have a severe adverse impact in terms of safety in order to be inconsistent with the Framework.

Conclusion

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

Stephen Hawkins

INSPECTOR

⁴ Mayowa-Emmanuel v Royal Borough of Greenwich [2015] EWHC 4076 (Admin).