



Appeal Decision

Hearing Held on 30 May 2019

Site visit made on 30 May 2019

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2019

Appeal Ref: APP/M2270/W/18/3203543

Land adjacent to Hartley Gate Farmhouse, Hartley Road, Cranbrook, Kent

- 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 Pickhill Developments Ltd against the decision of Tunbridge Wells Borough Council.
 - The application Ref 17/03481/FULL, dated 18 October 2017, was refused by notice dated 19 December 2017.
 - The development proposed is the erection of 8 no. dwellings with access, parking, landscaping and replacement of TPO tree T2.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the hearing it was agreed that the site address and description of development is as stated on the Council's decision notice rather than as stated on the application form and so I have reflected this in the heading above.
3. Since the appeal was lodged the National Planning Policy Framework (the Framework) has been revised. I have taken comments made on relevant implications for the appeal into account in my reasoning.
4. In the statement of common ground more policies are referred to by each of the main parties than are referred to in the reason for refusal on the Council's decision notice. The main parties agreed at the hearing that it is the policy in the latter which is most relevant to the main issue in dispute in this case.

Main Issue

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

Reasons

6. The appeal site adjoins Hartley Road. This is part of the A229 which is a primary distributor route linking the A21 to the south and the M20 and M2 to the north. Adjoining the appeal site the road has a 40mph speed limit. A footway exists on the opposite side of the road. Public views of the site are restricted by planting along the site frontage. The appeal site is in a semi-rural location and the surrounding area is characterised by open agricultural land and some residential development.

7. Policy TP4 of the Tunbridge Wells Local Plan 2006 ('the Local Plan') permits access to the road network subject to the satisfaction of specific criteria. Criterion 2 is that a safely located access with adequate visibility exists or could be created. Criterion 4 is that, outside the Limits to Build Development (LBD), the development would not involve the provision of an additional access or the intensification of use of an existing access directly onto a Primary or Secondary route. The appeal site is outside the LBD.
8. Paragraphs 108-109 of the Framework states that development should be prevented on highway grounds if there would be an unacceptable impact on highway safety. In that respect criterion 2 of Policy TP4 is consistent with the Framework. However, at the hearing the main parties agreed Policy TP4 is partly consistent with the Framework as criterion 4 is based on a structure plan which is no longer in place and continued application of this criterion may frustrate housing supply. Consequently, the Council advised each new access is assessed on its merits and I have no reason to disagree with this approach.
9. There has been disagreement between the main parties over which guidance should be used to calculate the visibility splays required for the proposed vehicular access to the appeal site i.e. whether the Design Manual for Roads and Bridges should be used or the Manual for Streets 2 (MfS2). During the appeal process the Council conceded that MfS2 may be used in this case, subject to an assessment of local context. But the Council consider any reduction in splay length from this guidance would create hazards on the highway. At the hearing the main parties agreed the north splay would comply with MfS2 and so the dispute between the main parties therefore concerns the south splay.
10. MfS2 provides guidance on the calculation of visibility splays and Site Stopping Distances (SSD). These are the distances drivers need to be able to see ahead and stop within from a given speed, calculated from the speed of the vehicle, the time required for a driver to identify a hazard and then begin to brake and the vehicle's rate of deceleration. For existing roads the 85th percentile wet-weather speed is used. Driver perception-reaction times of 1.5 seconds are recommended where the design speed is 60kph (37.3mph) and below and 2.0 seconds where it is above 60kph.
11. At the hearing the Council explained that, rather than use the appropriate deceleration rate specified in Table 10.1 of MfS2, the appellant's case had used a different figure to achieve a shorter splay which is contrary to MfS2. The appellant's case draws on a discussion of deceleration rates for heavy goods vehicles (HGVs) established from ROSPA¹ tests in 2001 set out in MfS2. However, those tests related to HGVs stopping from a speed of 30mph which is not the same as the speeds recorded at the appeal site.
12. Moreover, paragraph 10.1.2 of MfS2 provides guidance on SSD where the 85th percentile speeds are up to 60kph (37.3mph). This is not the same as the situation at the appeal site. Therefore deceleration rates have been employed which deviate from those specified in MfS2 where vehicles are travelling in excess of 60kph. At the hearing the Council also alleged the 85th percentile speed used is not just for light vehicles but includes slower heavier vehicles, which lowers the 85th percentile speed. The appellant advised this was an

¹ Royal Society for the Prevention of Accidents

- accurate summary to achieve the splay length to the kerb edge sought by the highway authority.
13. Based on MfS2 the southern splay should be 86.73m but as proposed is some 77m. Whilst the appellant seeks flexibility in the application of MfS2 the Council considers the south splay should be maximised due to the local context in this case. At the hearing the appellant referred to MfS2 where it advises that a reduction in visibility below recommended levels will not necessarily lead to significant problems unless there is local evidence to the contrary.
 14. The appeal evidence includes local crash data² which shows there have been 8 recorded crashes within a 500m radius of the proposed access over the last 5 years. Crash 1 from this data shows a crash caused by a vehicle pulling out on to Hartley Road from a side road close to the appeal site. Crash 2 indicates a crash caused by a similar manoeuvre from a different side road. At the hearing the appellant stated that this data is limited and/or indicates driver error or other environmental conditions as causes which is not evidence of design or layout issues relating to the road.
 15. The Council's view is that the crash data highlights difficulties drivers experience judging the speed of traffic on this stretch of road. At my site visit I viewed northbound traffic approaching the proposed access to the appeal site from a point (agreed between the main parties) where the driver of a car would be likely to be positioned whilst waiting to exit the appeal site. From this location, crouching down and looking toward oncoming traffic from the south, I saw that the nearby brow of the hill, a bend in the road and vegetation growing on the roadside, all within the length of the splay for the proposed access, combined to significantly compromise visibility for drivers approaching the proposed access/waiting to exit the appeal site. Considering the above points, including the crash data, I am not satisfied the proposed access would be safe.
 16. The appellant considers an allowance should be made for the south visibility splay to be offset from the kerb line into the carriageway. This is on the basis that vehicles do not travel close to the kerb line due to the presence of drain covers and debris at the roadside that may pose a hazard to cyclists and motorcyclists in particular. If a 1m offset is applied to the south visibility splay the evidence indicates a splay length of 89m could be achieved which exceeds the length sought by MfS2. If an 800mm offset is applied the splay would comply with the length sought by MfS2.
 17. Paragraph 10.5.3 of MfS2 acknowledges that vehicles will normally be travelling at a distance from the kerb but the evidence does not contain an objective standard to indicate what offset distance may reasonably be applied. Whilst I saw drain covers during my site visit at the roadside adjacent to the appeal site, these were considerably narrower than the offsets suggested above by the appellant and the road appeared well maintained with little or no roadside debris. An offset of 1m or 800mm is not therefore justified meaning the splay length sought by the Council, based on MfS2, cannot be achieved.
 18. The road outside the appeal site is relatively narrow and, as I saw on my visit, it is used by large lorries. I therefore consider it likely that road users, including cyclists and motorcyclists, would travel close to the kerb to maintain a safe distance from oncoming traffic on the opposite side of the road and in the case

² Dated 4 April 2019 reporting crashes between 1 October 2013 and 30 September 2018

of cyclists and motorcyclists, traffic trying to overtake. The appellant has drawn my attention to a development at The Pines, Smallhythe Road, Tenterden, where an offset of 1m was accepted by the highway authority. However, that case concerned a nearside splay and not an offside splay as in this appeal case. I therefore do not find that case directly comparable to the appeal scheme and so I am not satisfied it means I should accept a 1m offset in this case.

19. The appellant considers Hartley Road in the vicinity of the appeal site (from the junction with Swattenden Lane northwards) provides a number of urban signals to drivers which induce drivers to anticipate potential hazards and modify their speed. The appellant identifies these signals as including road side turnings, footways, street lighting, bus stops, commercial signage and frontage development.
20. At my site visit, when travelling northbound from the junction with Swattenden Lane toward the proposed access, I found signals to drivers to be limited. In particular there was no street lighting or bus stops and the road on both sides was lined with thick planting, a situation which would not significantly change with the appeal development in place as it would be concealed behind frontage planting. I do not therefore consider there are conspicuous signals to drivers in this location which induce drivers to modify their speed and, in any event, the evidence indicates recorded speeds in this location exceed the 40mph speed limit in both directions which does not support the notion that drivers modify their speed in this location.
21. In reaching these conclusions, I appreciate that braking technology may have improved since the guidance on visibility splays was published but I have no information which enables me to quantify this effect and the guidance remains unchanged and current.
22. My attention has also been drawn to Highway Code stopping distances and various appeal decisions in support of the appellant's case. But Highway Code stopping distances do not apply as they relate to emergencies and the appeal decisions were based on the specific local circumstances of those cases and so I cannot be certain they are directly applicable to the appeal scheme before me.
23. Overall, I conclude on this main issue that the proposed vehicular access would have a harmful effect on highway safety significantly increasing the risk of collisions in the area and therefore endangering life, I attach significant weight to this harm. Consequently, the scheme would not comply with Policy TP4 of the Local Plan noted above or the relevant provisions of the Framework in this regard, set out above, which seek to ensure new development is served by a safe access.

Planning Balance

24. The Council cannot demonstrate a 5 year housing land supply. As such, paragraph 11 (d) of the Framework is engaged. Accordingly, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
25. I accept that the appeal scheme would provide benefits. These include the provision of a mix of new housing units in an area where there is no 5 year

housing land supply, employment created during the construction of the development and local spending by future occupiers at local shops and services.

26. I also acknowledge that the Council's decision does not indicate harm would occur to the character and appearance of the area (including the High Weald Area of Outstanding Natural Beauty) but this is a neutral point rather than a benefit of the scheme.

27. Thus even if I were to conclude there is a shortfall in the five year housing land supply on the scale suggested by the appellant, the significant weight I attach to the adverse impacts on highway safety would significantly and demonstrably outweigh the benefits.

Conclusion

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

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jonathan Buckwell

DHA Planning

Matthew Garvey

DHA Planning

Paul Lulham

DHA Transport

Barry Sancto

Pickhill Developments Ltd

Robert Sancto

Pickhill Developments Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Richard Hazelgrove

Tunbridge Wells Borough Council

Margaret Parker

Kent County Council

INTERESTED PERSONS:

Duncan Anderson

Local resident

William Owen

Local resident