
Appeal Decision

Site visit made on 6 August 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2019

Appeal Ref: APP/P1133/C/18/3213517

Land at Mile End NGR 283728 72208 (Junction between Mile End Road and Larkspur Drive), Ashburton Road, Newton Abbot

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Persimmon Homes South West against an enforcement notice issued by Teignbridge District Council.
 - The enforcement notice was issued on 31 August 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of a vehicular access in the approximate position hatched green on the attached plan.
 - The requirements of the notice are:
Close off the vehicular access using bollards to provide an emergency access route only. The bollards (as marked with an 'x') should be set back 6.0m from the edge of the existing junction and be spaced no more than 1.0m apart as set out on the attached plan.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellants have referred to outline permission (ref 08/01245/MAJ) having been given in 2010 including the construction of 2 new junctions along with other developments. I have not been provided with details or any subsequent agreed reserved matters, only the outline decision notice. I am also informed by the Council that a planning application (ref 11/00441/FUL) was refused for the proposed formation of an access but allowed on appeal. The appeal decision included a pre-commencement condition. This necessitated the submission of a scheme to improve traffic management on Mile End Road and an ongoing requirement that the access should not be used by vehicles, other than by emergency vehicles, until an agreed scheme has been completed.
3. The Council states that the development approved on appeal lapsed as details were not agreed under the terms of the pre-commencement condition and the appellant has not provided evidence to dispute that. There is no suggestion by

the appellant (or ground pleaded) that planning permission is not required for the development addressed by the notice. Furthermore, the appellants have not paid the fee for the ground (a) appeal as originally pleaded and I cannot therefore consider the planning merits of the access.

The Appeal on ground (f)

4. The Council has not required the undoing of the operational development involved in the formation of the vehicular access. With respect to s173(4) of the Act, the required steps have the purpose of remedying the alleged injury to amenity caused by the breach. The Council's intention is to allow only pedestrian and emergency vehicular access. The appeal on this ground is therefore that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose of the notice.
5. The appellants have been in discussions with the highway authority regarding alternative junction arrangements although there is no suggestion that planning permission for an alternative scheme exists or is not required. I have no previously approved plan or other information to indicate that an obvious alternative would achieve the remedying of injury to amenity, or that lesser steps would satisfy the purpose of the enforcement notice.
6. The appeal on ground (f) does not succeed.

The Appeal on ground (g)

7. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed.
8. Further time is requested to enable the appellants to address the highway safety and design concerns of the Council. However, those matters have been under discussion for some years without a solution being found. Furthermore, I need to consider whether the requirements of the notice can be carried out in the time specified rather than any other scheme that may be agreed.
9. The reasons for issuing the notice relate to highway safety concerns which I have to take at face value given that I do not have the scope to re-assess the planning merits. The appellants state that 3 months is the minimum period required to order the materials, equipment and carry out the works. There is no presented evidence to indicate that a longer period would be necessary. The appellants are a development company experienced in carrying out or organising the carrying out of such works.
10. I consider therefore that the period of 3 months strikes a reasonable and proportionate balance between the ability to comply with the requirements and overcoming the highway safety dangers due to the unauthorised development. The appeal on ground (g) therefore fails.

Conclusions

11. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

A Harwood

INSPECTOR