



Appeal Decision

Site visit made on 20 August 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2019

Appeal Ref: APP/X1118/D/19/3234130

Old School House, Bickington Road, Bickington, Barnstaple EX31 2JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Capner against the decision of North Devon District Council.
 - The application Ref 66503, dated 27 March 2019, was refused by notice dated 5 July 2019.
 - The development proposed is described on the application form as 'alteration to existing access to create vehicular access together with erection of garage'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Old School House is a grand recently-renovated property on the northern side of Bickington Road. That is part of the B3233 which runs eastwards towards the centre of Barnstaple, connecting with the A3125 relatively nearby, and is the principal westwards route from the town connecting with Fremington, Yelland and Instow. Permission has previously been granted for the use of the former school as one, or two, dwellings.¹
3. Each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. The development plan includes policies of the North Devon and Torridge Local Plan 2011-2031 (adopted 29 October 2018, the 'LP').² Nevertheless the planning history to the site is of some relevance. That is particularly as the transport evidence before me responds to another inspector's reasoning in 2018 regarding access provision.³ The site was also the subject of unsuccessful appeals in 2007 against an enforcement notice regarding unauthorised access,⁴ and subsequent litigation resulting in a prosecution for non-compliance.
4. LP policy DM05 'Highways' and superseded policy TRA6 'General highways considerations' of the North Devon Local Plan (adopted originally in 2006) both set out that safe vehicular access to a site should be achieved. NPPF paragraphs 108(b) and 109 guide that 'safe and suitable' access should be

¹ Via planning permission Ref 40692 in 2005 and 41741 in 2016.

² I understand that although Fremington has been designated for the purposes of preparing a neighbourhood plan, that work is yet to be sufficiently advanced to be accorded significant weight.

³ Transport Written Representations and Technical Response, prepared by Trace Design dated July 2019 and March 2019; appeal Ref APP/X1118/D/18/3192819.

⁴ Ref APP/X1118/C/07/2048055, APP/X118/C/07/2048065.

ensured, and that development should only be prevented or refused on highways grounds if there 'would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'.

5. Aside from clarifying that 'severe' relates to capacity,⁵ the current iteration of the NPPF reflects the approach in paragraph 32 of the previous version. No case has been made that the geometry, speed limit, or nature of the B3233 in other respects has altered, to any meaningful extent, since 2018. Therefore the sole matter in dispute between the main parties whether or not the transport evidence justifies allowing the appeal.

Main issue

6. Against the context above, the main issue is the effect of the development proposed on the safe and efficient operation of the highway network.

Reasons

7. Not unexpectedly the front of the plot of Old School House is bounded by a traditional stone wall with railings above. The topography here declines broadly east to west such that the boundary wall is markedly lower by the Plough Inn than next to covered access to Grade II Listed Homestead Cottage.⁶ Presently the property is accessible only on foot via a relatively modest break in the wall demarcated by tall stone piers. Noting the planning history above, the western pier has either been reinstated or patched-up previously. The proposal is shown on plan 'C341 19 204 A'. It is to widen the access by setting the western pier back from the highway, approximately 0.7m closer to the adjacent property, thereby enabling vehicular access. That would increase the space available to enter and exit the site, and improve visibility of oncoming nearside traffic which is currently impeded by the wall when within the appeal site (albeit that eastwards visibility would be essentially unchanged, including by the form of the Plough Inn which is situated proud of the foremost elevation of the Old School House).
8. As reflected in the transport evidence, although standard methodologies for establishing visibility are useful, inevitably a context-specific judgement is necessary. That is the kernel of the inspector's reasoning in appeal Ref APP/R3325/W/17/3177561 brought to my attention by the appellant.⁷ I acknowledge that Design Manual for Roads and Bridges ('DMRB') states that it provides requirements in respect of highway layout and geometry, and as such is often deferred to as a definitive guide.⁸ The appellant highlights that DMRB sets out, in the context of trunk roads subject to the national speed limit, that 'where in the case of lightly used accesses the site conditions are particularly difficult' a two metre set back from the highway, or 'X' distance, may be used.

⁵ Reflecting relevant case law that had arisen since 2012, see question 21 of the Government's response to the draft revised National Planning Policy Framework of 1 July 2018.

⁶ Listed collectively with Homestead, which benefits from separate access off Bickington Road further westwards (list entry number 1107650).

⁷ Notwithstanding that the circumstances there and here are not comparable. In that instance access was proposed to the B3165 running through the small rural town of Somerton, in respect of which the inspector observed that vehicular use of the highway was 'relatively light and slow'.

⁸ Albeit paragraph 2.7 of the appellant's July 2019 transport evidence explains that 'it is not suggested that DMRB standards are applicable in this context...'

9. Manual for Streets and Manual for Streets 2 ('MfS', 'MfS2') represent guidance which should be applied with due flexibility. Paragraph 7.7.7 of the former and 10.5.9 of the latter set out that in certain circumstances a minimum X distance of two metres may be considered, and that 'unless there is local evidence to the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem'. In that context the appellant's survey of observed speeds recorded average eastbound and westbound speeds along the B3233 here as being 29.4 and 30.3 mph respectively (in response to the reasoning in paragraph 7 of the 2018 appeal decision).
10. The supporting plans show that Bickington Road in this location is relatively wide, at approximately 6.730m. In that context the appellant has modelled visibility (the 'Y' distance) from the proposed access two metres back from the kerb to the nearside tracked line along which vehicles would travel set one metre into the highway. On that basis visibility would be approximately 45m eastwards and 43m westwards. The recommended stopping site distance ('SSD') in MfS section 7.5 and table 7.1 in relation to vehicles proceeding at 30mph is 43m (adjusted for bonnet length), i.e. the distance necessary to allow vehicles to come safely to a stop. As others have previously,⁹ I acknowledge the apparent inequity in terms of access to Homestead Cottage, which does not benefit from good visibility, and that other properties relatively nearby have parking provision accessed directly off the B3233.¹⁰
11. However DMRB applies to the trunk road network, which does not include B Roads,¹¹ with MfS2 filling the perceived gap in application between it and lightly-trafficked residential streets. Moreover the use of two metres as an 'X' distance is described in DMRB as 'a relaxation', with 2.4m also appearing to be described as a reduction from some ideal figure. MfS paragraph 7.7.7 sets out that two metres may be appropriate in 'some very lightly-trafficked and slow-speed situations...'. Being the principal westwards route from the centre of Barnstaple to Fremington, Yelland and Instow, I am not of the view that the B3233 may reasonably be described as very lightly-trafficked. Paragraph two of the inspector's reasoning in relation to the 2007 appeals sets out that 'the road is admitted to being very busy', an observation that accords with mine during my mid-afternoon site visit (albeit anecdotal).
12. With reference to MfS paragraph 7.51 the 85th percentile speeds of observed traffic here are given by the appellant as 30.3 eastbound and 31.5 westbound, exceeding simple averages. Much of the highway network nationally is subject to a 30mph speed limit. Notwithstanding MfS paragraph 7.5.1, table 7.1 only gives SSD in respect of vehicles travelling up to 37mph, indicating that 30mph was not conceived of, necessarily, as being slow speed. Moreover, in my experience, it is not uncommon for observed speeds to be lower along roads where a 30mph speed limit applies (on account of the surrounding context or constraints in road width or alignment, for example). In that context it would, in my judgement, be inappropriate to use a two metre set-back or 'X' distance in this instance relative to the nature of the B3233 and observed speeds.

⁹ See paragraph 3 of the inspector's reasoning in relation to the 2007 appeals.

¹⁰ I saw that was the case of Hillside Cottage, Bedrock House, Police House and Pandora to name a few.

¹¹ With regard to the Department for Transport's Guidance on Road Classification and the Primary Route Network, January 2012, as explained in the MfS section entitled 'status and application'.

13. As set out in MfS figure 7.18 (a), or potentially (c) reflecting the slight curve in alignment of Bickington Road around Old School House and its neighbours, the visibility splay 'Y' distance is typically calculated to the nearside kerb. I acknowledge that vehicles do not travel brushing the kerb; therefore in practice there will be greater space between an access and the path/ track of oncoming vehicles. Cross-referring to MfS Figure 7.1, the minimum width enabling both smaller and larger vehicles to pass in opposite directions at the same time is given as 4.8 metres (the figure for two cars is 4.1 metres). On the basis of the appellant's modelling of the tracked path of vehicles set in 1m from the kerb, there would appear to be insufficient space for a smaller and larger vehicle to pass simultaneously.¹² Alternatively that would suggest that drivers would be inclined to pass closer to one another, rather than roughly equally spaced within each carriageway. That seems unrealistic.
14. Any safety record in this location cannot have taken account of vehicular use of the proposed access. Access to Homestead Cottage is evidently historic, that property likely tracing its origins to a seventeenth century tenement farmhouse (or earlier building). Many properties across the country have sub-standard access provision by modern standards. Creating further sub-standard access, given my reasoning above, in order to effect improvements to existing inadequate provision is not an argument that holds much weight. The result would be a worse situation overall. It also appears that the research referred to by the appellant in respect of the relationship, or lack of it, between increased visibility and collisions relates to T-junctions, and in any event there is no robust evidence before me as to the comparability of the junctions studied in that research and the circumstances in this instance.¹³
15. Moreover the appellant's argument that the scheme would benefit access to the neighbouring property argues against the position that access is presently safe, hence the stated absence of accidents over the past five years. I accept that there may be some benefits in respect of openness or ability to manoeuvre in that regard, notwithstanding the conflict that may arise on occasion between two co-located driveways in place of one. However the main limiting factor in respect of the neighbouring access in terms of visibility of oncoming is the principal elevation of Homestead Cottage itself, which would inevitably remain. I also note that, on account of the curve of the road, it appeared that there is generally significantly greater visibility from vehicular accesses located along the southern side of the B3233.
16. I am told that the Council's decision in respect of application Ref 66503 is inconsistent with that taken in decisions Ref 58414, 58869 and 60645. The first two relate to No 11 Thornlea Avenue Fremington, also accessed off the B3233, in respect of which the appellant explains that 'it is clear that in this example that the visibility has not been provided as requested...'. That alludes to a potential difference to what has been approved by the Council and effected in practice, which is not a robust basis for arguing in favour of a scheme. There is moreover little information before me as to the circumstances in that case, or whether what now exists is lawful. Case 60645, as I understand it, focused on the potential for conflict to arise between proposed access and use of a bus layby, rather than visibility as specifically in this instance. As such direct

¹² The width of the road at 6.730m subtract a metre by the kerb either side resulting in 4.37m.

¹³ In terms of the nature of the highway, vehicle speeds or the extent to which visibility varied, for example.

comparisons cannot be drawn between those instances. That is also true of the other cases cited in section 3.3 of the appellant's evidence of July 2019.¹⁴

17. For the above reasons the proposal would entail the creation of inadequate vehicular access, likely entailing visibility significantly below standard metrics. Whether for one or two houses that would lead to an increase in traffic entering the B3233, a significant element of the highway network where observed vehicle speeds are at or above the 30mph speed limit, with the clear potential to adversely affect the safe and efficient operation of Bickington Road. Whilst I accept that there is not a strong correlation between visibility distances and accidents, there must come a point where the former has the potential to increase the propensity for the latter. That, in my view, would occur here. I therefore conclude that the proposal would conflict with the relevant provisions of LP policy DM05 'Highways' and NPPF paragraphs 108(b) and 109.

Other matters

18. Old School House falls within the Bickington Conservation Area adjacent Grade II Listed Buildings. Subject to undertaking the development proposed sensitively, the Council are of the view that the proposal would preserve historic integrity. Whilst the proposal would not necessarily be unacceptable in that regard or otherwise, however, that is effectively neutral in the planning balance (rather than weighing positively in favour of allowing the appeal). Whilst I note the representation from the occupants of No 1 St Andrew's regarding an easement related their property, that appears to be a private legal matter.
19. I acknowledge that the proposal would be beneficial for any future occupants in terms of convenience of access. However that is essentially a private benefit, where planning relates principally to the public interest, and the history set out in paragraphs two and three of this decision would have been readily accessible to anyone who now has an interest in the property. There is, moreover, no evidence before me that the use of Old School House would inherently be unsustainable or unduly compromised by the absence of such access. I mention that only in so far as robust evidence may have carried some weight in favour of allowing the appeal. As such no other matters are of such significance so as to justify allowing the appeal relative to the harm that I have identified above would result.
20. This is the third (or fourth) appeal related to the site, following litigation. It is the general principal that parties to planning appeals meet their own costs. However there is provision for an award of costs if unreasonable behaviour has occurred directly resulting in another party incurring unnecessary expense at appeal, including at the initiative of inspectors.¹⁵ Examples of potential types of behaviour that may give rise to a substantive award are set out in the Planning Practice Guidance.¹⁶ In the event that vehicular access is considered here in the future, those proposing it may wish to be aware of that context.

¹⁴ Whilst I note those relate to where a two metre set back may be appropriate, none appear to relate to a B Road and some involve the creation of significantly greater visibility splays than in this instance. Moreover there is little information before me in respect of the surrounding context in those instances, or of any set-in from the kerb that had been applied in calculating 'Y' distances, relative to my reasoning above.

¹⁵ PPG Reference ID: 16-036-20140306.

¹⁶ Including at PPG Reference ID: 16-053-20140306.

Conclusion

21. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR