
Appeal Decision

Site visit made on 1 October 2019

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 21 November 2019

Appeal Ref: APP/J1860/W/19/3233184

Larches Wood at (OS 7015 7431), Clows Top DY14 9NJ

- 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 Woodland Investment Management Ltd against the decision of Malvern Hills District Council.
 - The application Ref 18/01682/FUL, dated 19 November 2018, was refused by notice dated 11 June 2019.
 - The development proposed as described on the application form is full planning application for the regularisation of access track.
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Decision

1. The appeal is allowed, and planning permission is granted for access track at Larches Wood at (OS 7015 7431), Clows Top DY14 9NJ in accordance with the terms of the application, Ref 18/01682/FUL, dated 19 November 2018, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Proposed Block Plan; 20441-01-2;20441-01
 - 2) The access hereby approved shall not be first brought into use until the first 10 metres of the access measured from the edge of the carriageway, has been surfaced in a bound material.

Application for costs

2. An application for costs was made by Woodland Investment Management Ltd against Malvern Hills District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The access has been constructed and therefore I am considering this appeal retrospectively.
4. I am aware that the Council has served an enforcement notice for the unauthorised creation of an access and the appellant has made an appeal against this notice¹. However, this falls outside the scope of this Section 78 appeal and is therefore not a matter considered as part of this decision.

¹ [APP/J1860/C/19/3233896](#)

Main Issue

5. The main issue is the effect of the access on the safety of users of the adjacent highway.

Reasons

6. The appeal site is situated outside the village of Clows Top within the open countryside. It forms part of a parcel of agricultural land and directly adjoins the B4202 classified highway. The access would serve a track leading to an area of woodland known as Larches Wood. The access features a galvanised steel gate hung on wooden posts and is set back from the main road. The area between the gate and the highway is constructed of loose material with grass verges either side. The area is also utilised by a gated access serving the neighbouring agricultural fields.
7. A full assessment of the site and speed survey submitted by the appellant with the application was undertaken by the Council. This indicates that the access would be capable of accommodating agricultural vehicles and that the visibility splays proposed in either direction would be acceptable as shown on the plans. The Council now argue that the access at the point proposed would have inadequate visibility to the south. I have no evidence before me to support this would be the case or any alternative proposal from the Council for the safe level of visibility. I therefore find that there to be sufficient visibility in both directions at the junction of this access onto the B4202 and not material harm to highway safety.
8. The Council in their appeal statement consider that the speed survey was a snap shot in time and only undertaken for a week. At no point during the application did the Council raise any concerns that this was inadequate and should be carried out for a longer period. The national Planning Policy Guidance² sets out that the scale, scope and level of detail within a transport assessment should be established as early in the development management process as possible, a key issue is the appropriate study parameters (i.e. area, scope and duration of study). As such I would disagree with the Council and I consider it provides enough detail to reach a satisfactory conclusion on the survey including vehicle movements, speeds and required visibility.
9. Although located on a bend there is sufficient distance between the highway boundary itself and the access between the grass verges to enable larger vehicles to safely enter and exit the site, combining this with the adequate visibility from both directions which provides for the speeds along this road it would be unlikely that vehicles would end up being stationary on the highway itself. Therefore, it would not compromise the safety of the B4202 and other road users.
10. The access would generate traffic, but this would not be a significant amount due to the use of the access to Larches Wood and forestry management. Furthermore, the appellant confirms that for most of the year large vehicle movements will be limited to one or two per week. I acknowledge third parties have raised the concern over the use of the access serving a forestry track, tracks and parking in the field, however I must deal with the proposal before

² National Planning Policy Guidance: Paragraph: 014 Reference ID: 42-014-20140306

and not the use of the forestry track or when this was constructed, the appeal is for the access itself onto the classified highway of the B4202.

11. The B4202 is two-way and of reasonable width with central markings, whilst unlit and without footways, runs a substantial length of unpopulated, undeveloped countryside running through Clows Top. The accident data shows no incidents have occurred over the last ten-year period, furthermore there were no Police reported personal injury accidents between 2014 and 2019. The appellants assessment acknowledges there have been a total of four accidents over a period of 120 months from the north of Clows Top of which were unrelated to the appeal site. I acknowledge that local residents may have witnessed near misses along this road and potential accidents. Nonetheless, these have not been registered with any regulatory authority and I have no evidence other than anecdotal evidence to support the claims that the point of access for the appeal site is an accident blackspot.
12. In terms of the access to the property Fortune Green this is located on the opposite side of the road but not directly facing the access to Larches Wood. I observed on my site visit this access is some distance from the road to the gated curtilage of Fortune Green. It is narrow in part but increases in width where the track leads to the access onto the B4202. The gradient of this track slopes towards the road and therefore any vehicle exiting from Fortune Green would have clear visibility of vehicles leaving or entering the access from Larches Wood. This would also be the case for vehicles using the access, the subject of this appeal as they would have clear sight of the access to Fortune Green. As such I do not consider there would be any highway safety conflict between the appeal site and the access to Fortune Green.
13. For the reasons given above the access would not cause any harm to highway safety and other road users using the B4202. It would comply with Policies SWDP4 and SWDP21 of the South Worcestershire Development Plan, adopted 2016, which sets out highway design and principle criteria and that vehicular traffic from the development should be able to access the highway safely and the road network should have the capacity to accommodate the type and volume of traffic from the development.
14. Paragraph 108 and 110 of the National Planning Policy Framework (the Framework) seeks that safe and suitable access to the site be achieved for all users; and any significant impacts from the development on the transport network can be cost mitigated to an acceptable degree; and development should create places that are safe and minimises conflict with other road users. Whilst Paragraph 109 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. On the evidence submitted I find no reason why the access would be in conflict with the Framework.

Other Matters

15. I acknowledge third party comments that the Woodland Trust are trying to sell off the woodland to individuals, whilst this may be the case, I have given it limited weight in this decision.
16. The fact that the access has been constructed without permission is not a reason in itself to dismiss the appeal. The development should be judged against material planning considerations.

Conditions

17. The Council has provided suggested conditions for the appeal and as such both parties would have seen these, I have no evidence to suggest the appellant and Council disagree with their content. However, I have undertaken some minor editing and rationalisation of the first condition in the interests of precision and clarity.
18. It is necessary in the interests of precision, to define the plans with which the scheme should accord. In the interests of highway safety, I have imposed a condition relating to the access for the surface to be of bound material.

Conclusion

19. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

K A Taylor

INSPECTOR